

UNRWA

A guide to conducting misconduct investigations



Department of Internal Oversight Services

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Foreword

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) assists and protects a population of some 4.6 million Palestine refugees residing in Jordan, Syria, Lebanon, Gaza and the West Bank.

UNRWA is unique among UN agencies in that it provides its services directly to refugees. In and around the 58 refugee camps UNRWA's 29,000 staff delivers programs in primary education, primary health care, relief and social services, infrastructure and micro-finance. Providing a direct service requires a high frequency and intensity of contacts with the refugee population and this brings with it many positive aspects but also challenges and risks. The scale of UNRWA operations, the volatile nature of the operating environment and the need to comply with UN principles and donor expectations places a premium on high standards of staff conduct. Any allegations of misconduct can negatively affect the reputation and credibility of the Agency.

Establishing an investigation capacity that meets United Nations standards is an important component of the Agency's accountability framework. Misconduct investigations must be credible, accurate, timely, thorough and fair.

These guidelines prepared by the Investigations Division, Department of Internal Oversight Services (DIOS), are intended to be used as a practical guide by Agency personnel responsible for conducting misconduct investigations.

Scope and limitations of these guidelines

These guidelines reflect United Nations best practice and include information on investigative techniques, methods and procedures and should be considered advisory in nature. There is no expectation that any of these techniques, methods and procedures will be applied to particular investigations.

These guidelines do not create any substantive rights. They do not confer, impose or imply any new rights or obligations other than those contained in United Nations regulations and rules. Furthermore, they do not limit staff members' rights and obligations as provided in United Nations regulations, rules and other administrative issuances.

Keeping up to date

To ensure these guidelines remain relevant, they are continuously reviewed and updated. Please consult the DIOS intranet site for the most up-to-date version.

Acknowledgements

The Department of Internal Oversight Services would like to acknowledge the use of a number of publications relating to the conduct of internal investigations. These include the investigations manuals of the Investigations Division of the Office of Internal Oversight Services, United Nations Development Program and the Office of the United Nations High Commissioner for Refugees.

Finally, we would like to thank the many people who contributed to the development of these guidelines.

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Responding to an allegation of misconduct

This chapter provides a definition of misconduct and outlines the procedure for handling allegations of misconduct.

This chapter also provides advice to field and department directors on how to assess such allegations and tailor an appropriate investigative response.

Misconduct defined

Misconduct is not defined in terms of detailed prohibitions; rather it is a failure by staff to comply with the required standards of conduct. For this purpose of these guidelines:

*'Misconduct includes any failure to comply with obligations under the Charter of the United Nations, UNRWA Staff Regulations and Staff Rules or other relevant administrative issuances, UNRWA Financial Regulations and Rules, or the Standards of Conduct of the International Civil Service, including any request or instruction by any staff member to violate any of these rules or standards.'*¹

Examples of misconduct include fraud, theft, misconduct, mismanagement, corruption and misappropriation, waste of resources and abuse of authority. It can include personnel management issues as well as breach of confidentiality, corporal punishment, entitlement fraud and sexual harassment.

Reporting suspected misconduct

Allegations of misconduct can originate from a variety of sources including staff members, anonymous complainants, the media and members of the public.

In many instances a staff member, particularly those in supervisory positions may receive information or suspect that another staff member has failed to comply with the required standards of conduct.

Staff members who receive information or suspect that another staff member has engaged in misconduct should not conduct their own inquiries to assess whether the complaint is credible.

You should report suspected misconduct but you should not report allegations that you know to be incorrect.

Duty to Report

It is the duty of staff members, consultants, contractors, interns and United Nations volunteers to report suspected misconduct, misappropriation of Agency assets, fraud, corruption or abuse of authority within the Agency or Agency programmes as soon as possible after becoming aware of the activity.²

Internal reports of misconduct should be forwarded through the following established mechanisms:³

- The individual's immediate supervisor
- The Field Director or Headquarters Department Head
- The focal point appointed to receive reports of sexual exploitation and abuse
- The Director, Department of Internal Oversight Services
- The Director, Department of Human Resources
- The Deputy Commissioner General or
- The Commissioner General

¹ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations' at paragraph.5.

² UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations' at paragraphs 6 – 9.

³ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations', paragraphs 10 – 12.

Initial action on receiving a complaint

If a report of misconduct has been brought to your attention and you are in a supervisory role you should consider protecting the complainant and maintaining confidentiality.

You should take care to manage an employee who in good faith provides information to their manager or other senior officer concerning misconduct. Poor management of a complainant can reflect poorly on the Agency and adversely affect the investigation.

It is important to preserve the confidentiality of the person making the complaint and the person who is the subject of the complaint. This ensures the integrity of any future investigation and minimises the risk of harm to the reputations of all parties involved. It is also important that you consider whether any potential evidence is at risk of destruction. If you think evidence may be destroyed you must take positive steps to prevent such a loss.

Should I tell the subject employee?

It is not appropriate to inform an employee that he or she is the subject of a misconduct allegation before the commencement of a duly authorised investigation. To do so, may compromise the investigation and lead to the destruction of evidence or the intimidation of witnesses.

Management responsibilities

Investigations into reports of misconduct, misappropriation of Agency assets, fraud, corruption or abuse of authority may be initiated by field and department directors, the Director of the Department of Internal Oversight Services (DDIOS) or the Commissioner-General. No other staff member has the authority to initiate investigations into such reports.⁴

Except in circumstances involving a potential conflict of interest,⁵ all reports of misconduct, misappropriation of Agency assets, fraud, corruption or abuse of authority which are not received in the first instance will be immediately forwarded to DDIOS by the person who receives or becomes aware of them.⁶ This reporting requirement will be satisfied by prompt recording in the Agency's case management system.

Tailoring a response

It is the responsibility of the field director, department director or their delegate to evaluate allegations of misconduct and determine an appropriate response. In determining that response the manager's primary considerations should be to assess the seriousness of the allegation and the risk to the Agency from the consequences of the misconduct.

Risk can be assessed by reference to the following factors:

- Credibility of the complainant
- Credibility of the information (is it corroborated or part of a known pattern)
- Impact on UNRWA's operations

⁴ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations', p. 4 at paragraph 16.

⁵ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations', paragraph 34.

⁶ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations', paragraph 14.

- Impact on the program / project / office
- Impact on the public perception of UNRWA
- Impact on UNRWA funding
- Timeliness (date misconduct occurred / urgency of the complaint)

Response options

At the conclusion of the assessment, the manager has a number of options available in determining the appropriate response.

Declined

The case is declined on the basis that the information does not relate to an allegation of misconduct and therefore does not warrant investigation.

Recorded for information

The matter does not include sufficient information to proceed and further clarification is not possible (such as anonymous complaints). The information is recorded for information only.

Suspended

The allegation does not pose a significant risk to the Agency and there are competing priorities for investigative resources. The matter is suspended pending additional information or a reallocation of resources.

Management intervention

The complaint relates to minor misconduct such as office management disputes, basic misuse of equipment, failure to comply with supervisors' instructions or other issues best dealt with through local management intervention or through the existing performance management framework.

Investigation

The allegation warrants investigation and is assigned to a staff member with the appropriate competencies.

Regardless of their titles - boards of inquiry, fact finding committees or informal investigations - all investigative activity must comply with United Nations standards.

Preliminary assessments

Even though a decision may have been taken to investigate an allegation, a manager may require additional information so that he or she can make a more informed decision on the appropriate response. In these cases, it may be prudent to conduct a preliminary assessment of the allegation.

In most cases, a brief review of the allegation will conclude that the matter should be investigated. This conclusion may be based on a number of factors. The allegation may be quite clear or the nature of the allegation may require an immediate response. This review is a preliminary assessment. However in a small number of cases it may be prudent to conduct a more comprehensive and documented preliminary assessment. Preliminary assessments of this nature are very useful in dealing with allegations that are unclear, complex or somehow problematic.

A preliminary assessment is normally limited to an interview of the complainant and the collection of information that does not require any other interviews or overt collection of documents or other material. Conducted by one staff member they provide a better understanding of the environment in which the alleged misconduct occurred. This can assist in determining whether the allegation could be true and whether an investigation is warranted. Whilst cases can often be closed on the basis of a preliminary assessment, disciplinary action should never be taken purely on the basis of this exercise.

Even though the preliminary assessment or investigation found no evidence of misconduct you may still

have to deal with system deficiencies or policy gaps that contributed to the complaint.

A Preliminary Assessment Report template is provided at appendix 1.

Authority to conduct an investigation

Investigations into reports of misconduct can only be initiated by field and department directors, the Director of the Department of Internal Oversight Services (DDIOS) and the Commissioner-General.⁷

In initiating an investigation the manager should carefully consider their choice of investigator and develop clear terms of reference.

Assign the investigator

The choice of investigator will be guided by the nature of the complaint and the experience, qualifications and training of your staff. The investigation should not be conducted by anyone with direct involvement with the person or matter being investigated. You should also avoid tasking a supervisor with the investigation of a subordinate.

No person who is perceived to represent or advocate on behalf of any of the parties involved in an investigation should be assigned as an investigator. This does not preclude executive members of the International Staff Association (ISA) or Area Staff Union (ASU) from participating in investigations however, it must be clearly understood that they do so in their capacity as an Agency employee, and not in their capacity as an executive member of the ISA or ASU.

If possible, the person assigned should be senior to the subject staff member and should have some knowledge of the systems and processes involved or some

experience or training in investigations or legal reasoning.

Unless the allegations are particularly complex or broad, most investigations can be performed adequately by two investigators.

DDIOS recommends that managers assign two investigators and nominate one of those staff member as the focal point for the inquiry.

Terms of reference

The terms of reference are a brief statement that sets out the parameters of the investigation and its purpose. It will take into account that practicalities of the investigation, particularly the resources that are available to the investigator.

Terms of reference are necessary because an investigator may be tempted to take the investigation into areas that are not necessarily material to the original allegations. This can cause an investigation to lose focus or unnecessarily exceed reasonable timelines.

The terms of reference should also include a time frame for completion of the investigation. It should be remembered that a timely conclusion to the inquiry is in the interest of both the Agency and the subject staff member.

In some cases new facts and circumstances may require the investigator to inquire into matters not included in the original terms of reference. In such cases, the investigator should advise the authorising manager and discuss expanding the terms of reference.

⁷ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations', p. 4 at paragraph 16.

DIOS and the investigation process

DIOS Mission

The mission of the DIOS is to provide internal oversight that adds value to the Agency through independent, professional and objective internal audit, inspection, investigation and consulting services and thereby promote responsible administration of resources, a culture of accountability and transparency and improved programme performance.⁸

DIOS investigation function

The DIOS is mandated to be the central point for the receipt of all allegations and complaints on possible violations of the Agency's regulations, rules and other pertinent administrative issuances, fraud, theft, misconduct, mismanagement, corruption, misappropriation, waste of resources and abuse of authority irrespective of their origin or initial point of receipt with the Agency.⁹

Requirement to report to DIOS

Amongst other things, DIOS is required to maintain a confidential registry of allegations and complaints.¹⁰ To carry out this function (and except for cases involving a potential conflict of interest within DIOS) all reports of misconduct, misappropriation of Agency assets, fraud, corruption or abuse of authority which are not received in the first instance by DIOS will be immediately forwarded to DIOS by the person who receives or becomes aware of them.¹¹

Field and Department Directors, and the Commissioner-General are also required to advise DDIOS of the result and recommendations of any investigation they may undertake or initiate.¹²

These reporting requirements will be satisfied by prompt recording in the Agency's case management system. In addition, investigations into reports of fraud or corruption must be conducted in accordance with the advice of DDIOS, the Ethics Officer, or the Officer designated to

⁸ UNRWA, Organisation Directive No. 14 '*Charter of the Department of Internal Oversight Services*', at paragraph 8.

⁹ UNRWA, Organisation Directive No. 14 '*Charter of the Department of Internal Oversight Services*', at paragraph 12.

¹⁰ UNRWA, Organisation Directive No. 14 '*Charter of the Department of Internal Oversight Services*', at paragraph 12 (a).

¹¹ UNRWA, '*General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations*', paragraph 14.

¹² UNRWA, '*General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations*', paragraph 18.

perform the functions of the Ethics Officer.
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Further investigation by DIOS

Organisation Directive No. 14 authorises DIOS to provide advice on investigations conducted by Field and Department Directors and to conduct further investigation if not satisfied with the results or recommendation of any investigation carried out by the Field and Department Directors.¹⁴

DIOS Authority

The Director and staff of DIOS have unrestricted access to all functions, records, property, premises and personnel. Also, all officers and staff members, consultants, contractors, interns and United Nations volunteers are required to cooperate with DIOS audits, investigations and inspections and provide access to all records, documents and information requested by DIOS in connection with such audit, investigations and inspection, except for medical records which require the prior written consent of the staff member concerned.¹⁵

Other issues

Anonymous complaints

Where possible, anonymous complaints should be investigated.¹⁶ If the information contained in the complaint is insufficient to initiate an investigation then at the very least the information should be recorded in case further actionable information is received later.

Malicious complaints

Reports of misconduct should be made in the reasonable belief that what is being reported is true. Persons making reports of misconduct may be called upon to support these allegations. Reports which are found not to have been made in good faith or on reasonable grounds may expose the complainant to disciplinary action.¹⁷

Criminal matters

In some cases, misconduct may also represent a violation of national laws. Examples of this include allegations where an UNRWA staff member is accused of theft, embezzlement or taking bribes for procurement contracts.

¹³ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations', paragraph 17.

¹⁴ UNRWA, Organisation Directive No. 14 'Charter of the Department of Internal Oversight Services', at paragraph 12 (f) and (g).

¹⁵ UNRWA, Organisation Directive No. 14 'Charter of the Department of Internal Oversight Services', at paragraph 19 (a).

¹⁶ UNRWA, 'General Staff Circular No. 5/2007' provides at paragraph 12 that 'anonymous complaints or allegations may be considered taking into account a number of factors including the seriousness of the complaint or allegation, its credibility, and the extent to which it can be confirmed or corroborated by attributable sources.'

¹⁷ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations' at paragraph 8.

The United Nations and its officials are accorded certain privileges and immunities so that it can effectively discharge the United Nations' functions.¹⁸ The primary issue that arises in connection with investigations is the immunity of officials from legal process for any words spoken or written and any acts performed in their official capacity.¹⁹

When investigations cover conduct that might potentially result in legal action, whether criminal or civil, the issue of immunity should be addressed with the Department of Legal Affairs, which can advise on waivers and disclosure of documents in addition to immunity. For example, waivers of immunity may be required for staff members who provide testimony before any court should the matter be referred for criminal or civil action.

The decision to refer a matter for criminal prosecution is often based on the findings of an Agency investigation. Consequently, the Agency's investigation must be conducted in a manner that can withstand the judicial rigour of criminal prosecution. This does not however, change the standards of investigation or investigation methodology generally, as the Agency's investigation remains an administrative process irrespective of the type of conduct being investigated.

What if the complainant withdraws the allegation?

In some cases, the complainant may withdraw their allegations. This does not release the Agency from the obligation to inquire into the complaint. The complainant may be withdrawing their allegations because of threats or intimidation, or because the matter has been resolved through *ta'aweed*, *taswieh* or

sulha. This should be explored with the complainant and dealt with accordingly. In any case, the investigator should obtain a statement from the complainant outlining their reasons for withdrawing the allegations. This should be included in the investigation report and considered when assessing the person's credibility as a witness.

Ta'aweed and other forms of complaint resolution

Regional traditions sometimes allow for the resolution of disputes through *ta'aweed*, *taswieh* or *sulha*. The settlement of disputes in this manner will have no bearing on the Agency's obligation to conduct an investigation. In fact, resolution of a complaint in this manner may provide evidence that could be used to substantiate an allegation of misconduct by an UNRWA staff member.

What if the subject resigns during the investigation?

There may be instances where you are investigating allegations of misconduct and the subject staff member resigns before the inquiry is completed. In most cases, the resignation of the subject employee will negate the need to continue with the investigation. However, you should also consider any other issues, such as whether the Agency has suffered a financial loss or whether there is a significant risk to the Agency's reputation from discontinuing the investigation. System deficiencies or policy gaps, which may have contributed to the complaint, also need to be considered and recommendations made to mitigate the likelihood of a repeat of the misconduct.

¹⁸ Convention of the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946.

¹⁹ For further information on the privileges and immunities of Agency officials and their waiver, see UNRWA HQ Legal Instruction No. 1 of 2009.

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Core principles for conducting an investigation

This chapter explains the concept of administrative investigations and outlines the authorities required to conduct an Agency investigation.

This chapter also describes the role of the investigator and the fundamental standard for investigations in the United Nations.

What is an investigation?

There are many terms used to describe an investigation. These include boards of inquiry, fact-finding committees, investigation committees, preliminary investigations and informal investigations.

Regardless of the term used, all investigations including all types of related inquiries can be defined as a legally based and analytical process designed to gather information to determine whether wrongdoing occurred and, if so, the persons or entities responsible.

Administrative investigations

The process of investigating allegations of misconduct is one element of the accountability system of the United Nations; a system administrative by nature and intended to ensure employee accountability. The contract of employment places an obligation on employees to act in a certain manner, including cooperating with investigations into possible contravention of those duties. At the same time, the organisation is bound to ensure procedural fairness to staff accused of misconduct.

Authority to conduct an investigation

Investigations into reports of misconduct can only be initiated by field and department directors, the Director of the Department of Internal Oversight Services (DDIOS) and the Commissioner-General.²⁰

In initiating an investigation the manager will provide clear terms of reference for the investigation.

Terms of reference

When you are given responsibility to conduct an investigation you will be provided with written authorisation and the terms of reference from a field or department director or their delegate. The terms of reference are a brief statement that sets out the parameters of the investigation and its purpose.

If necessary, seek clarification of the terms so that you understand exactly what you are authorised to investigate.

Terms of reference clarify the main issues arising out of the complaint and assist in keeping the investigation focussed and within established timelines. If, during the investigation, a change in circumstances leads you to believe that it is necessary to amend the terms of reference, seek approval from the person who commissioned the investigation and established the original terms of reference.

The role of the investigator

The role of the investigator is to independently and objectively gather and assess material relevant to the inquiry and make appropriate findings and recommendations.

To be effective, an investigator must have the confidence of all the parties involved. The best way to achieve this is to be neutral and to consider all perspectives. You must be aware of the motivations and stresses that have led to the complaint but not identify personally with the complainant or the subject. Facts not in dispute can be accepted at face value while facts in dispute should be subjected to a constant process of checking and analysing.

²⁰ UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations', p. 4 at paragraph 16.

Standard for investigations

The Uniform Guidelines for Investigations²¹ outline the fundamental standards for investigations conducted in the United Nations:

- Investigation is a profession requiring the highest personal integrity
- Persons responsible for the conduct of an investigation should demonstrate competence
- Investigators should maintain objectivity, impartiality and fairness throughout the investigative process and disclose promptly any conflicts of interest to supervisors
- Investigators should endeavour to maintain both the confidentiality and, to the extent possible, the protection of witnesses
- The conduct of the investigation should demonstrate the investigator's commitment to ascertaining the facts of the case
- Investigative findings should be based on substantiated facts and related analysis, not suppositions or assumptions
- Recommendations should be supported by the investigative findings

The standards for UNRWA investigations are based on General Assembly resolutions; UNRWA regulations, rules, and administrative issuances; the jurisprudence

of the United Nations internal justice system; and core principles and best practices for investigative activities.

Investigator misconduct

Always conduct yourself with integrity. Never resort to trickery, deception or unlawful means to obtain evidence.

Those performing an investigative function must comply with the highest standards of conduct expected of international civil servants. They must responsibly use the authority of their position and abide by UNRWA regulations, rules and administrative issuances.

Procedural fairness

Procedural fairness is analogous to the concepts of due process and natural justice. It applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. It is a safeguard applying to the individual whose rights or interests may be affected and is an important means for checking facts and identifying issues.

What are the rules of procedural fairness?

Provide a fair and impartial hearing

²¹ Uniform Guidelines for Investigations, as endorsed by the 4th Conference of International Investigators held in Brussels on 3 and 4 April 2003.

If misconduct is substantiated, the outcome of associated disciplinary proceedings can include measures that will adversely affect a subject's reputation, promotional opportunities or employment status. These measures include:

- Written censure ²²
- Suspension without pay ²³
- Demotion for misconduct ²⁴
- Dismissal or termination for misconduct ^{25 26}
- Summary dismissal for serious misconduct ²⁷

Reprimands and suspension with pay are not considered disciplinary measures.²⁸

The principle of procedural fairness requires that a person receive a fair and impartial process. All subject employees are entitled to be treated equally, using established rules and principles. No adverse decision can be made until the subject has been given a reasonable opportunity to respond.

In order for your investigation to comply with the principle of procedural fairness, you are required to offer the subject the opportunity to comment on any facts that might be detrimental to their interests. The subject is entitled to know the substance of the allegations that have been made against him or her and / or the grounds for any adverse comments. The subject must also be informed about any exculpatory material that may have been collected over the course of the investigation.

Avoid bias

It is crucial that you remain neutral and unbiased in your investigation. You should not favour one person over another, or be closed-minded and not listen or take into account one party's version of events.

As well as avoiding actual bias it is important that you avoid the appearance of bias. Allegations of bias are often made against investigators, and in deciding whether bias influenced the investigation, a tribunal will ask if there is anything about the investigator, or the conduct of the investigator, that might create a reasonable suspicion that the person may make findings based on bias, prejudice or other extraneous factors. If so, the tribunal may find that the investigation process has been undermined.

It is important that you recognise the potential for real or perceived bias and bring it to the attention of your supervisor as soon as possible.

Remain vigilant to the potential for conflict between your role as investigator and matters personal to you.

Ask yourself whether you have a personal relationship with any of the people involved in the investigation. Whilst knowledge of a person (or the fact that you have worked with them) is not enough to satisfy an allegation of bias, bias would be inferred if the relationship was a close friendship or conversely if there was a history of

²² International Staff Rules, Rule 110.3 (b) and Area Staff Rules, Rule 110.1 (1).

²³ International Staff Rules, Rule 110.3 (b) and Area Staff Rules, Rule 110.1 (1).

²⁴ International Staff Rules, Rule 110.3 (b) and Area Staff Rules, Rule 110.1 (1).

²⁵ International Staff Rules, Rule 110.3 (b).

²⁶ Area Staff Rules, Rule 110.1 (1).

²⁷ International Staff Regulations, Regulation 10.2 (b) and Area Staff Regulations, Regulation 10.3.

²⁸ See International Staff Rules, Rule 110.3 and 110.3 (b) and Area Staff Rules, Rules 110.2 and 110.1 (2).

animosity between you and any of the principals involved in the inquiry.

You should also ensure that you were not a participant in any of the issues central to the investigation. If you witnessed something, or managed or supervised the area concerned, you should not be conducting the investigation.

Once it is known that an investigation is underway you will almost certainly be approached by people seeking an insight into the allegations and an assessment of the veracity of the complaint. To avoid allegations that you are biased or have prejudged the outcome of the case do not comment on the investigation or engage in conversations not essential to your inquiry.

When does a subject employee have to be advised of the investigation?

The right to be informed about the substance of allegations and the opportunity to respond must be provided prior to any determination that may adversely affect the person's interests.

An investigator should be conscious of the fact that prematurely alerting the subject to the existence of the investigation may result in the destruction of evidence, modification of records, production of pre or post dated reports and collusion between potential witnesses. These are all risks that must be managed and weighed against the requirement to comply with the principles of procedural fairness.

What do I tell the subject employee about the basis for the adverse comments?

If you propose to include adverse comments about someone in your report of investigation, then you must make that person aware of the substance of the comments and grounds for those remarks. Certainly, no final decision that affects a

person's interests can be made before they have an opportunity to respond.

Do I have to show the subject employee the documents that I have accumulated during the inquiry?

Procedural fairness does not require that the subject employee be given access to every document that has been produced or obtained during the investigation. What you are required to do is make sure that the subject employee is provided with enough detail about the allegation to be able to respond. This would include showing the subject documents that are relevant to the facts in issue. For example, in a fraud investigation this may include showing the subject copies of invoices, ledgers or books of account. It would not normally include showing the subject copies of witness statements.

How can I be sure that the findings of my investigation will not be overturned on appeal?

The basis for overturning investigative findings is often attributed to violations of due process. In order to prevent your findings from being overturned:

- Make sure that the principles of procedural fairness are applied throughout your investigation
- Familiarise yourself with the UNRWA regulations, rules and administrative issuances, and where relevant national laws applicable to the allegation
- Make sure that your investigation is complete and that all available witnesses have been interviewed and all documentary evidence has been gathered
- Weigh the evidence that supports the allegation against any evidence that does not support the allegation

- Ensure that your investigative findings are firmly supported by the evidence.

When things go wrong

No matter how well the investigation has been planned and executed, from time to time things will go wrong. However, in most cases the situation is retrievable if swift and appropriate action is taken.

When an investigation goes wrong, investigators should always acknowledge and take action to rectify the problem as soon as possible.

The types of things that can go wrong may include the emergence of an actual or perceived conflict of interest or the failure of procedural fairness.

An investigator can become aware of facts or circumstances indicating a conflict of interest that was not apparent at the outset of the inquiry. As soon as the conflict becomes apparent, the issue should be raised with the person who authorised the investigation and where appropriate, the

complainant and the subject employee. The complainant and the subject employee's views should be considered when determining whether a conflict exists and the most effective measures for managing that conflict.

In most cases, the way forward will include the removal of the investigator and the appointment of a new investigator. If the conflict of interest was identified a long way into the inquiry then the investigation may be difficult to recover. Nevertheless, it may be necessary to bring in a third person to oversee or cross-check the investigation. In certain circumstances it may be necessary to redo key witness interviews. If any reliance is to be placed on material produced by the investigator then the consent of all the relevant parties should be obtained.

At some point in the investigation, it may become apparent that there has been a failure to abide by the principle of procedural fairness. In most cases, this can be overcome by simply affording the procedural fairness that has been denied.

3

Preparing the investigation

This chapter outlines the initial action that should be taken on being assigned an investigation.

This chapter also describes the difference between a preliminary assessment and an investigation and the steps that should be taken in planning investigative activity.

Initial action by investigators

On being assigned to conduct an investigation your first considerations should be to avoid conflicts of interest, maintain confidentiality and preserve evidence.

Identify potential conflicts of interest

Conflicts of interest can be difficult to identify and can undermine the entire investigation.

It is important that your investigation be conducted impartially. You as the investigator must not have, and must not be perceived to have, any conflict of interest in relation to:

- The complaint
- Persons likely to be adversely affected by the inquiry
- The alleged misconduct
- The policies and procedures that are subject to review as part of the investigation process.

For the most part there can be no confidence in the outcome of an investigation where there is an actual or perceived conflict of interest. This is because any argument made by the subject employee about the integrity of the process can never be totally rebutted.

Although your investigation must be conducted impartially, it is not realistic to expect that you will be someone totally independent and with no prior connection with the person under investigation. Casual association with the person being investigated, or the fact that you have worked with them before is not sufficient to justify an allegation of conflict of interest. If you believe you may have a conflict of

interest you should raise the issue with the person who commissioned the investigation and established the original terms of reference.

Preserve evidence

As soon as a matter is referred to you, you should consider whether any potential evidence is at risk of destruction. If you think evidence may be removed, destroyed or altered you should ensure that material is preserved and made secure (see chapter 4 on Gathering Evidence).

Maintain confidentiality

It is important to preserve the confidentiality of the person making the complaint and the person who is the subject of the complaint.²⁹ This ensures the integrity of the investigation and minimises the risk of harm to the reputations of all parties involved. You should not however, promise anonymity to the complainant. Whilst the Agency will take all possible steps to ensure that the identity of the complainant is not disclosed, the nature of the information provided may inadvertently disclose the source.

Preserving the confidentiality of those involved in the complaint minimises the risk of harm to these persons and ensures the integrity of the investigation.

If a potential witness feels that they are unable to trust the integrity of the investigator, they will be more reluctant to cooperate with the investigation.

The identity of the person under investigation and any other person involved in the investigation should also be kept confidential. Accordingly, any witnesses interviewed during the inquiry should be

²⁹ UNRWA, General Staff Circular No. 5/2007 at paragraph 22 requires that the 'Agency and any person receiving a report of misconduct, misappropriation of Agency assets, fraud, corruption or abuse of authority shall protect the confidentiality of the identity of any individual making the report and all information and communications through these channels, to the maximum extent possible.'

advised not to discuss the matter with other witnesses or third parties.

Witness interviews should also be conducted in locations where the witness cannot be seen or heard.

Your investigation may require you to obtain confidential internal documents such as personnel records or work-related emails. You should not misuse any information that you gather during the inquiry and you should ensure that all documentary or electronic material (including the product of your inquiries) is properly secured. You should avoid putting information on an unsecured computer; giving confidential information to others to type, copy or send; or leaving documents on the photocopier or fax machine. These are simple mistakes that can undermine the integrity of your investigation.

Despite your best efforts, the fact that a complaint has been made may become known within the workplace. It is important for you to manage this by giving careful consideration to what you tell the different parties involved.

Preliminary assessments and investigations

Even though a decision may have been taken to investigate an allegation, a manager may require additional information so that he or she can make a more informed decision on the appropriate response. Preliminary assessments provide a better understanding of the environment in which the alleged misconduct occurred and can assist in determining whether the allegation could be true and whether an investigation is warranted. They are particularly useful in dealing with allegations that are unclear, complex or somehow problematic. In these cases, one investigator may be assigned to conduct a preliminary assessment of the allegation.

Unlike an investigation, preliminary assessments are normally limited to an interview of the complainant and the collection of information that does not require any other interviews or overt collection of documents or other material.

The purpose of the preliminary assessment is threefold. First, to obtain all the relevant information from the complainant; second to identify the rule, regulation or administrative issuance that has potentially been breached; and third, to analyse the available information and make recommendations on whether further investigation is necessary.

Whilst cases can often be closed on the basis of a preliminary assessment, disciplinary action should not be taken without first conducting an investigation.

Interview the Complainant

Regardless of whether you have been tasked with conducting a preliminary assessment or an investigation your first step should be to conduct a thorough interview with the complainant and obtain as much information as possible about the conduct alleged.

In some cases, this will not be possible because the complainant wishes to remain anonymous. In these cases, all you can do is analyse the information as provided in the original complaint.

Complaints are often expressed in emotive terms and suggest malicious intent. Although a complainant's motive may cloud their judgment and possibly even embellish the complaint, it should not prevent you from considering the substance of the complaint. It is not uncommon for people with an ulterior motive to give accurate information about misconduct.

All information should be assessed on its merits.

By their very nature, complainants are often insiders with intimate knowledge of the rules, regulations and administrative issuances that govern their particular workplace. They can be extremely useful in identifying other witnesses and accessing documents that may be relevant to the investigation. In complex procurement or financial investigations they can also be adept at explaining how the conduct breaches the regulatory framework.

Nevertheless, it is important to remember that sometimes the original complaint will allege one type of misconduct such as fraud, but after a more comprehensive interview with the complainant, the allegation is more appropriately identified as something different.

If you are able to interview the complainant, the interview should be documented in a statement and signed by the witness and interviewer.

[A Witness Statement template can be found at appendix 2.](#)

Further direction on how to conduct a witness interview can be found at chapter 5 of these guidelines.

The assigned investigator should also discuss the issue of confidentiality with the complainant. It should be explained that in some circumstances, the very nature of the complaint will automatically identify the complainant to the subject employee. This occurs in circumstances where the complainant is the only person who had the requisite knowledge to make the complaint.

Identify the relevant provisions of the regulatory framework

One of the most important elements of both the preliminary assessment and the investigation is to identify the provisions of the regulatory framework that may have been breached. It is critical to establish whether the alleged misconduct is proscribed as such, by reference to the rules, regulations or other administrative

issuances. In other words, if there is no breach of the regulatory framework then there is no misconduct and no need for an investigation.

You should consider the full range of regulatory instruments applicable to the category of personnel against whom the complaint has been made. Remember, for the most part, the applicable rules and regulations will vary, depending on whether the subject employee is an international staff member, area staff member, consultant, contractor, junior professional officer, casual labour, or United Nations Volunteer. You should also remember that if the alleged misconduct occurred some time ago, it will be necessary to identify the regulatory framework that was in place at the time of the alleged breach.

The regulatory framework that you may consider includes:

- United Nations Charter
- Staff Regulations
- Financial Regulations
- Staff Rules
- Organisation Directives
- Personnel Directives
- General Staff Circulars
- General Services Circulars
- International and Area Staff Circulars
- Administrative Services Bulletins
- Staff Bulletins
- Headquarter Bulletins
- Technical Instructions
- Standards of Conduct for the International Civil Service
- Applicable Criminal Laws

In citing the regulatory framework, you should also consider referencing manuals, guidelines, handbooks or relevant statements from the Office of the Commissioner-General.

There may also be situations where the alleged misconduct also constitutes a violation of the host country's criminal laws. One example of this would be an allegation that a staff member has engaged in sexual abuse or fraud. If substantiated, this would

not only represent a violation of staff rules and regulations but a violation of the host country's criminal codes. Regulation 1.8 of international and area staff regulations also place an obligation on UNRWA personnel to observe local laws and regulations. Any breach of local laws or regulations could also constitute a violation of regulation 1.8. If possible, the specific provisions of the national law should be included in the preliminary assessment or report of investigation.

If you are unable to identify the relevant provisions of the regulatory framework contact DIOS, the Department of Legal Affairs or the Department of Human Resources to clarify the rules, regulations and administrative issuances applicable to the different categories of UNRWA personnel.

Investigation planning

The way the investigation is managed is critical to a successful outcome. Proper planning ensures that the investigation is carried out methodically and in a professional manner. It assists in identifying sources of evidence and avenues of inquiry and minimises the opportunities for people to remove, destroy or alter evidence.

The main planning tool available to the investigator is the investigation plan.

The planning process will also clarify the approach to be taken and chart the course for your inquiry. It should keep you focussed on the tasks at hand and alert you to any problems before they occur. For these reasons, it is important that you formulate your investigation plan before you conduct any inquiries.

It is also important to note that investigations rarely proceed as originally planned and you should be prepared to revise your plan as new information emerges. You should follow the evidentiary leads and not try to make the evidence fit into your investigation plan.

Formulate the plan

Investigation plans vary in complexity from case to case. Some are merely a summary of the allegations and a basic outline of the inquiries to be conducted, whilst others incorporate an evidence matrix listing the various facts at issue, the tasks to be completed for each issue, and the name of the person responsible for completing those tasks.

[A template for an Investigation Plan can be found annexed to these guidelines at appendix 3.](#)

Components of the plan

Most good plans consist of the following components:

Background

Outlining the background to the case sets the context for the investigation and serves as a briefing paper to those not acquainted with the inquiry. It should include a brief narrative of the complaint and the results of any preliminary assessment.

Terms of reference

Include the terms of reference as provided in the documentation referring the matter to you for investigation.

Allegations

Include a numbered list of the allegations. It is important to remember that a single complaint may contain a number of allegations. The investigation plan should include only those allegations that you are authorised to investigate according to the terms of reference.

Facts at issue and avenues of inquiry

Each allegation should be followed by a reference to the regulatory framework that corresponds to the allegation; the facts at

issue for that particular allegation and the relevant avenues of inquiry.

The facts at issue are those matters that need to be established to determine the veracity of the allegation. In cases involving a complaint about the conduct of an individual, the facts at issue will usually include:

- The identity of the subject employee
- The place and date that the alleged conduct occurred
- Whether the alleged conduct actually occurred
- If the alleged conduct did not occur what conduct did actually occur
- Whether the actual conduct is in violation of the regulatory frameworks
- Whether the subject employee engaged in the conduct alleged, and
- Whether the person had authority to engage in the conduct.
-

Identifying the potential sources of information or avenues of inquiry will assist in establishing the facts at issue. One of the best ways to think about potential avenues of inquiry is to come up with as many possible explanations, or scenarios as possible which might explain the subject employee's actions.

The avenues of inquiry will predominantly consist of interviewing witnesses and reviewing documents. This component of the investigation plan compels the investigator to consider what evidence is required to test the allegations, and what avenues are available to secure that evidence.

Tasking list

The interview plan should include a list of specific tasks to be completed over the course of the inquiry. This list will be based on the avenues of inquiry and should be listed in order of priority. The tasks will mainly consist of witness interviews and the collection and review of documents.

Witness testimony is critical to any investigation. The investigation plan should

consider the timing of interviews based on witness availability, order of interview and whether an interpreter is required. A proposed schedule of interviews should be included in the tasking list.

Identification of relevant documents is also important and the plan should address the means for obtaining those records and their subsequent handling and storage. If there is a need to obtain electronic evidence then consideration should be given to immediately obtaining any records that are retained on back-up media that is periodically overwritten.

Other issues

This section should include any issues that may affect the conduct of the investigation. The types of issues to consider include:

- Whether the complainant wishes to remain anonymous
- Whether there is a potential for destruction of evidence or interference with witnesses
- The potential for media attention
- Whether there are any political considerations that may affect the investigation
- Whether there are cultural issues that may have an impact on the investigation. This is particularly relevant to matters involving the investigation of sexual misconduct
- Have any key witnesses left the Agency or will they be unavailable for a prolonged period.

Resources

Provide an assessment of the resources you will require to conduct a successful investigation.

The types of issues to consider include:

- The need for specialist assistance such as forensic IT support. In cases involving allegations of sexual assault against children you might consider engaging the services of a

person experienced in conducting such interviews

- Any logistical or security issues that are likely to affect the investigation.

Where any specialist assistance is anticipated, early planning is required. Rosters of experts with skills that do not exist within UNRWA are maintained by DIOS, but their availability is limited and their use must be planned well in advance.

If you require any assistance drafting the Investigation Plan contact DIOS.

Losing focus

In some cases, an investigation may lose focus and go outside the terms of reference for the inquiry. In these cases, it is important to review the Investigation Plan and identify where, why and how the investigation went off track and prepare a strategy to refocus the inquiry.

Any investigator who feels out of their depth due to the complexity of the inquiry should acknowledge this and take steps to address their concerns. Sometimes reviewing and updating the Investigation Plan can clarify the issues and give the investigator the confidence to plan their way out of the situation causing apprehension. Seeking advice from DIOS, or the person authorising the investigation may also serve to alleviate these concerns.

Advice to Managers

Do I have to review and approve the Investigation Plan?

This is your decision. The Investigation Plan is a tool for ensuring that the inquiry is carried out methodically and professionally. It is designed to get the investigator to think about the facts at issue and what information or evidence is required to prove or disprove the matter under investigation. However, it can also be used by managers as a means to monitor the inquiry and to

ensure that it is focussed on the right subject matter.

In cases that are deemed particularly sensitive you may want to instruct your investigators to submit the plan to you for approval prior to any investigative activity.

Why does it take so long to complete these investigations?

The amount of time that it takes to investigate an allegation will largely depend on the terms of reference and the amount of resources you assign to the inquiry. The complexity of the case, logistical issues and the availability of witnesses are all issues which will have an impact on the ability of the investigators to complete the inquiry within established time lines. Whilst a timely conclusion to the inquiry is in the interests of both the Agency and the subject staff member, it is also important that the investigation be thorough and that all reasonable avenues of inquiry be exhausted.

What about allegations we find to be frivolous or malicious?

At some point during the investigation it may become apparent that the complaint lacks substance or credibility and that any further investigation would be an unjustifiable use of limited resources.

Whilst you must keep an open mind and confine your analysis to a review of the available facts, there are some indicators that may suggest the complaint is frivolous or malicious

- The complainant has a history of making false or unsubstantiated complaints
- There is no information to support the allegation in any way
- The allegation is of such a nature that a reasonable person could not treat it as being bona fide

- The allegation is without any foundation and appears to be designed to harass, annoy or embarrass the subject staff member.

If you believe there are strong grounds for believing that the complaint is frivolous or malicious you should close the case on that basis.

4

Gathering evidence

This chapter will explain the standard of proof in UN disciplinary proceedings and provide advice on how to identify and obtain the best evidence.

Standard of Proof

The standard of proof required in United Nations disciplinary proceedings is a lower standard of proof than that required in criminal matters. Nevertheless, it is still incumbent on the Agency to prove that the staff member engaged in misconduct. The United Nations Administrative Tribunal has repeatedly stated that disciplinary proceedings are not of a criminal nature, but rather are administrative proceedings, regulated by the internal law of the Organisation. As such, it is not necessary to prove a case beyond reasonable doubt. It is only necessary to present adequate evidence to support its findings and recommendations. That is, sufficient facts to permit a reasonable inference that a violation of rules, regulations or administrative issuances had occurred.³⁰

Defining evidence

As an investigator you should have a basic understanding of the rules of evidence and a comprehensive understanding of how you should gather information that is relevant to the complaint.

Evidence can be classified as either direct or circumstantial.

Direct evidence, sometimes called real evidence, is evidence of what a person said or did or perceived through any one of their five senses. For example, a witness who states that he saw the subject employee steal money from a desk drawer gives direct evidence.

Circumstantial evidence is evidence from which facts may be inferred. For example, a fingerprint expert who says that his examination proves that the subject employee's fingerprints were on the desk drawer gives circumstantial evidence from which the subject employee's guilt may be inferred.

Sources of evidence

The main sources of evidence are:

- Witness testimony
- Documentary evidence
- Electronic evidence
- Physical evidence
- Forensic evidence

The importance of these sources of evidence will vary according to the nature of the complaint. For example, documentary evidence may be relevant to a financial investigation and less relevant to an investigation involving allegations of sexual exploitation and abuse.

In most investigations undertaken by UNRWA, the main sources of evidence gathered will be witness testimony and documentary evidence. However, from time to time it may also be necessary to conduct a scene examination or engage the services of specialists qualified to provide expert evidence about computer forensics or document examination.

Relevance

An essential element of evidence is relevance. The evidence should make the existence of any fact that is of consequence to a matter under review more probable or less probable than it would be without the evidence. There should be some logical connection between the information and the facts at issue. In the early stages of an investigation it is often difficult to know what evidence is likely to be relevant, so the general rule is that it is better to collect too much evidence than too little.

Rules of evidence

Whilst there are no clearly defined rules of evidence in the UN internal justice system, there are core principles which apply. It is useful to

³⁰ Administrative Tribunal (26 November 1997) Judgement No.850.

have an understanding of these principles so that the evidence you obtain is the best available.

Rules of evidence were developed over several centuries and are reflected in various forms in modern legal systems. Their purpose is to prevent allegations being raised without a basis in provable fact.

In all cases, the tribunal shall determine the admissibility of any evidence³¹ and although there is no explicit requirement for adherence to specific rules of evidence in the UN internal justice system, a basic understanding of the principles will assist you to identify and obtain the best available evidence.

Once you establish that the information is relevant, you need to consider how valuable the information is to your investigation. Some legal systems provide that in certain circumstances, relevant evidence may be ruled inadmissible by a tribunal of fact. Two of the more important rules of exclusionary evidence relate to hearsay evidence and opinion evidence.

Although there is nothing to prevent the investigator from considering hearsay and opinion evidence, it is generally accepted that unless certain circumstances exist, very little weight should be attached to that evidence.

It would certainly be unsafe to make an adverse finding against a subject based purely on such evidence.

Hearsay evidence

Hearsay evidence is evidence based on what has been reported to a witness by others rather than what he or she has heard themselves. For example, a witness who states *'I was talking to Mark and he said that he saw Jean take the money from drawer'* is giving hearsay evidence. This is useful information and alerts the

investigator to go to the source and interview Mark to verify and obtain the information first hand. In this case, the information provided by the witness (hearsay evidence) carries less weight than the information provided by Mark (direct evidence). In all cases, investigators should make every effort to obtain direct evidence. If this is not possible, then your attempts should be documented in a Note to File and referenced in your final report.

[A template for a Note to File can be found at appendix 5.](#)

There are of course exceptions to the hearsay rule. One important exception is admissions made by the subject. This is based on the assumption that people don't tend to make damaging admissions against their self-interest and as a consequence any admission is likely to be true. For example, if Mark from the previous example said *'Jean told me that she took the money from the drawer'* – this could carry some weight.

Opinion evidence

A witness's opinion about a person or about what happened is generally irrelevant to your inquiry. Therefore, as a rule, a witness interview should not contain opinions about something or someone unless the witness is an expert who has been asked to provide an expert opinion. However, some investigations will require assistance from persons with an expertise in a field relevant to your investigation. In corporal punishment and sexual abuse cases you may have to consult medical personnel; financial irregularities may require the help of an auditor or information technology specialist; and the analysis of documents may require the assistance of a document examiner. These experts may give an opinion on issues relevant to their field of expertise. For example, a medical doctor may give an opinion as to the cause of an injury and a

³¹ International Staff Regulations and Area Staff Regulations, Article 13, paragraph 1.

document examiner may give an opinion on the authorship of a document.

DIOS maintains a list of external experts who are routinely used by other UN investigative bodies. If you believe there is a need to engage assistance outside of the Agency you should first consult DIOS.

Document examination

One of the most common requests for expert assistance relates to document examination. There are however, a number of means for confirming the authorship of a document without resorting to expert analysis. The identity of the author may be established by:

- The author stating that they wrote the document
- A statement from a person who has knowledge of the author's handwriting from long acquaintance, or
- A statement from a person who saw the document being written by a particular person.

Medical evidence

In cases alleging corporal punishment, sexual abuse or some other form of physical assault, it will always be the first priority of the investigator to ensure that the person has received appropriate medical treatment and if possible psychosocial counselling. In most cases, medical treatment would have been provided at the time of the original complaint, but this is something that you should verify on being assigned the investigation.

To obtain the medical records of a person alleging some form of physical assault you must have the person complete a medical release form.

[A Medical Release template is annexed to these guidelines at appendix 4.](#)

In some cases, the medical records you obtain will contain very little useful

information. It is not uncommon to obtain medical records which only indicate that the person sought medical assistance and was prescribed certain medication. In many cases it may be useful to obtain a statement from the medical professional who treated the victim. A doctor may be able to provide important information on issues such as the demeanour of the alleged victim at the time he or she presented for treatment and what the person said about their reason for seeking medical attention. Depending on their area of expertise, a doctor may also offer an opinion on whether the injuries were consistent with the person's account of how they occurred.

It should be remembered that assault allegations are inherently difficult to investigate. These types of events usually occur in private and with few witnesses, and as a result medical evidence can be an important source of corroboration for the victim's account.

DNA evidence

DNA analysis is rarely used in UN investigations. Its use has been restricted to the investigation of sexual abuse and even then, two elements must exist before DNA testing will be considered:

- The subject employee must have denied engaging in sexual contact with the alleged victim, and
- Genetic material was recovered from the victim or from items associated with the victim and there is reason to believe that that genetic material belongs to the subject.

DNA samples can only be taken with the express permission of the subject employee and can only be used for the purpose for which consent was granted.

If you believe that DNA analysis may assist your investigation consult DIOS for further information and direction.

Electronic evidence

Electronic evidence can be an important element in investigations and can be gathered from a variety of locations including UNRWA computers, flash drives, computer discs, servers and telephone systems. In most cases, investigators are interested in obtaining information stored as documents or emails. However, the collection of this type of evidence requires special collection, handling and analysis techniques and should not be attempted without the appropriate authorisations and expert assistance. Staff members engaged in investigations likely to require the collection of electronic evidence should also review the provisions of the Information Systems Directive (Organisational Directive No. 26).

If you believe that the collection of electronic evidence is necessary for your investigation consult DIOS for further information and direction.

Fingerprint evidence

As with DNA evidence, fingerprints examinations are seldom a feature of UN investigations. However, in some rare cases fingerprint analysis of a document or other item might be something that the investigator wishes to pursue.

Two elements must exist before fingerprint analysis will be considered:

- The subject employee must have denied handling the particular document or item, and
- Fingerprints have been developed on the document or item and there is reason to believe those fingerprints belong to the subject employee.

Fingerprints can only be taken from a subject with their express consent and can

only be used for the purpose for which consent was granted.

If you believe that the collection of fingerprint evidence is necessary for your investigation consult DIOS for further information and direction.

Obtaining the evidence

Much of the information you obtain may be second or third hand but you should always attempt to get your information directly from the source. This negates the possibility that the information has been distorted and allows a subject employee the opportunity to directly challenge the source of the evidence.

Duty to cooperate

Organisation Directive 14 outlines the 'Charter of the Department of Internal Oversight Services'. It grants unrestricted access to all functions, records, property, premises and personnel. It also requires all officers and staff members, consultants, contractors, interns and United Nations Volunteers to cooperate with *inter alia* investigations and provide access to all records, documents and information requested by DIOS in accordance with their mandate.

It is a general principle of administrative investigations that staff cooperate with duly authorised investigations.³² This includes providing documents and making a statement if requested. Personnel who refuse to cooperate or are later found to have lied, destroyed evidence or otherwise obstructed the investigation may themselves be subject to disciplinary action.

The only exception to this relates to medical records. Written authorisation of the staff member concerned is required

³² This obligation is also provided in UNRWA, 'General Staff Circular No. 5/2007 Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations', p. 2.

before their medical records can be obtained.

Search of Agency premises

On some rare occasions it may be necessary to search an UNRWA office or workspace to locate material relevant to the inquiry. This search should always be conducted in the presence of an independent third person – preferably the manager of the workplace where the search is taking place. If a search of a staff member’s desk is necessary then that search should be conducted in the presence of that staff member. If the staff member is on leave, then the search should be delayed, unless to do so would compromise the inquiry, or is likely to result in the destruction of evidence. You should only search to obtain material that is the property of UNRWA such as Agency files or other documentation. It is not appropriate to search through a person’s personal belongings such as a handbag or brief case without the owner’s consent.

In some cases, investigators may need to obtain material that is located outside UNRWA installations. Investigators may obtain public records such as land titles but will generally require written authorisation from the subject employee to obtain material such as bank statements.

Failure to cooperate

There may be times when staff members refuse to cooperate with requests for interview or to provide access to documents, UNRWA facilities or personnel. In some cases, sanctions can be applied to personnel who refuse to cooperate with a duly authorised investigation. However, you should first make sure the staff member is aware of his or her obligation to cooperate. If access is still refused, the issue should be raised with the staff member’s immediate supervisor. Any further resistance should be reported to DIOS.

Any refusal to cooperate should also be recorded in the investigation file and noted

in the report of investigation. It should also be considered when assessing the person’s credibility as a witness.

Securing evidence

One of the recurring themes running through these guidelines is the need to consider how best to preserve evidence. The type of evidence you may need to secure will vary from case to case. In a procurement investigation you may want to secure the vendor file whilst an allegation concerning violations of the Agency’s Information Communication and Technology policy may require the seizure of a computer hard drive.

When to secure evidence is one of the more difficult decisions to make. You need to find a balance between competing priorities – the requirements of confidentiality and discretion, and your duty to secure evidence to prevent its destruction, alteration or concealment.

In making a decision on the timings associated with securing evidence you should consider the following factors:

- Is the evidence at risk of being destroyed, altered or concealed?
- Is the evidence under the subject employee’s custody, control or constructive possession? If so, does he or she have the ability to create, delete or modify key documents or records?
- Are the same records available at another location that is not accessible to the subject employee?
- Will securing the evidence prematurely alert the subject to existence and purpose of the investigation?

You should also consider the options for securing evidence. In most cases, this will simply involve moving the evidence to a secure environment.

In a small number of cases it may be necessary to consider recommending that

the subject be suspended to remove his or her access or control over the evidence. This is an important consideration if you receive information that the subject has destroyed evidence or is attempting to interfere with witnesses.

If you believe that suspension is warranted you should refer to Rule 110.2 of Personnel Directive No. A/10/REV.1 (Area Staff) or Rule 110.4 of the International Staff Rules (International Staff).

See the section titled suspension during investigation at chapter 5 for further information.

Original documents or copies

Best practice dictates that you should always take original documents rather than accept photocopies. Relevant information is often written in the margins or supplemented by post it notes. If you request photocopies, this additional information may be accidentally or purposely excluded by those preparing the copies. Taking possession of the original documents also negates any suggestion that the copies were altered by investigators, and provides the best material possible, should there be a need to submit the material for document examination.

In some circumstances, taking possession of original documents may have an adverse affect UNRWA operations. In these cases you should consider providing a complete copy of the documents to the person who held them. If this is not feasible, then consider leaving the original documents in place and working from duplicates.

Handling evidence

In conducting your investigation you need to be aware of the basic procedures for handling evidence. Evidence must be handled carefully to avoid allegations of tampering or other misconduct – allegations which can undermine the integrity of your investigation. This is

done by maintaining the 'chain of custody'. The chain of custody is the chronological documentation that shows the receipt, custody, control, transfer, analysis and disposition of evidence.

From the moment you take possession of the evidence you need to maintain a record of its receipt, handling and disposal.

[At appendix 6 you will find a template for a Receipt.](#)

This Receipt should be completed and a copy given to the person who is being requested to transfer the material to your possession.

The information contained on the Receipt includes:

- The date and time you took possession of the material
- The details of the person from whom you received the material
- The details of the investigator taking possession of the material
- The details of the material received.

If the material consists of documents, each document should be marked in the upper right hand corner with a sequential number. The number should be entered on the document with a permanent marker. This is the only time that it is acceptable for an investigator to change the appearance of documentary evidence in any way.

The first document in the series should be marked '1' and each following document marked with a number incremented by one. These reference numbers and a brief description of the documents should be entered on the Receipt. For example, a personnel file may be referred to as, '1 - thirty-five pages of a personnel file in the name of John Smith'. A second document may be referred to as – '2 – ten page document relating to travel claims for John Smith'.

Once you have taken possession of the original documents, you should have them copied and use the copies during the

inquiry. The original documents should be kept secure under lock and key and only members of the investigation team should have access to the material.

Where appropriate, verify the validity of the documents with the author of the document or if the files are kept as a normal part of UNRWA operations, by the manager or other person who can speak to their origin and authenticity.

The circumstances surrounding the receipt of the material, the fact that they were copied and by whom, as well as the location the material was secured should then be entered on a Note to File. If the material is subsequently removed from storage, the circumstances surrounding its removal should also be documented in the same manner. The combination of the Receipt and Note to File should provide an accurate record of the chain of custody. At the conclusion of the investigation and any disciplinary proceedings the material should be returned to the originating office and the Receipt endorsed accordingly.

Scene inspections

The value of a scene inspection will vary from case to case, and will be particularly useful in testing whether the conduct under inquiry was physically possible, or to verify the statement of a witness who claims to have seen a particular event from a particular location.

In conducting a scene inspection you need to be clear on what you are trying to achieve. If possible, you should arrange a time that coincides with the time of day when the original event took place. You should take detailed notes, sketch the scene and if possible photograph the area. The observations that you make at the scene, as well as any sketches or photographs, should be recorded on a Note to File for inclusion in the permanent record of the investigation.

When things go wrong

Investigators who comply with guidelines on handling evidence should never be in the unenviable position of losing key evidence. Nevertheless, a situation may arise where a document or other item crucial to the investigation is lost or accidentally destroyed.

The initial reaction should obviously be to try to locate the item. In some cases, particularly with documentary evidence, you may be able to locate a copy or present the evidence in some other way. In the case of evidence that cannot be reproduced, investigators should draw up a statement, indicating that they have viewed the evidence and then describe it in detail, including the details of any corroboration from other witnesses.

The loss of the evidence should be recorded on a Note to File and included in the investigation file.

5

Interviewing witnesses and subjects

Witness testimony is the most important element of any investigation. The manner in which the interview is conducted can have an impact on the quality and amount of information obtained.

This chapter will provide advice on how to arrange, conduct and record interviews with witnesses and subjects.

Interviewing witnesses and subjects

The main objective of an investigative interview is to obtain all the evidence that is relevant to the subject matter, and in such a way as to minimise the possibility of the interviewee subsequently denying, changing or contradicting the information they have provided.

The subject interview essentially places the staff member under investigation in the position of a witness, although unlike a witness, the investigation may lead to a decision that adversely affects their interests. As a consequence, the interview of a subject employee requires additional measures to ensure the staff member is afforded procedural fairness.

Interviewing a subject employee can be stressful for all parties concerned. At the very least, the fact that the person is being interviewed over allegations of misconduct can cause great embarrassment, and at worst their continued employment with UNRWA may be at risk.

As an investigator you have a fair degree of flexibility in the conduct of interviews however there are some basic principles which must always be applied.

Remain impartial

As with every other component of the investigation you should remain impartial and resist framing questions in a way that may indicate that you have preconceived ideas about the issue being discussed.

Be transparent

If the interviewee asks you questions about the investigation, you should be as honest and transparent as possible, without compromising the inquiry or breaching confidentiality. You should explain the investigation process and at the outset of the interview clearly inform the interviewee of the reason for their attendance.

Inducements and threats

You should never make any statements that may cause an interviewee to believe that they will obtain any privilege, concession or immunity from disciplinary action. To do so, calls into question the integrity of the investigator as well as the motive of the person to cooperate. Likewise, an investigator should never resort to threats to obtain someone's cooperation.

Who should be interviewed?

Never deceive the interviewee and always give them enough opportunity to respond to your question.

Witness testimony is the cornerstone of every investigation. Witnesses are a valuable source of information because they may have directly perceived something with their senses. They may have heard something, seen something, touched something, smelt something or tasted something. All witnesses who are relevant to the investigation should be interviewed. When deciding relevance, a good rule of thumb is to identify those that have information or created documents that concern the subject matter under inquiry.

Order of interviews

The first interview is usually with the complainant as part of the complaint initiation process or the preliminary assessment. The order in which the remaining witnesses are interviewed will depend on the importance of their evidence, their degree of association with the subject employee and their availability.

Regardless of the order, it is important that you avoid delays between the interview of witnesses who are known to each other and therefore able to collude.

To avoid collusion, witnesses should never be interviewed together.

Witnesses should be interviewed separately and asked to keep the content of the interview confidential. A witness's evidence can become corrupted if that person learns what other witnesses have said or done. It can inadvertently cause some witnesses to change their version of events or alter their own perceptions about what occurred.

Witness testimony can also be influenced by external factors such as media reports and office gossip so it is important that these potential influences are addressed and negated during the interview process. Carefully constructed questioning should keep the witness focussed on matters directly perceived by them and relevant to the subject matter of the inquiry.

When arranging interviews the location and timing may need to be discreet so that the person does not have to explain their absence to their colleagues.

When should the subject be interviewed?

Whilst there can often be compelling reasons to interview the subject employee at the commencement of your inquiry, the general rule is that the interview should occur towards the end of the investigation. The advantages of conducting the interview at the end of the inquiry are self-evident. It allows you to complete the major aspects of the investigation, assess the evidence and raise all relevant matters with the subject in one single interview.

How much notice do I give the subject employee?

It is necessary to give the subject employee at least 24 hours notice of the impending interview. Where possible, the notification should be in writing either by memo or email. The notification and any response should be included in the investigation file. If written notification is

not possible, then the subject should be notified orally and a record of that conversation recorded on a Note to File (appendix 5) and included in the investigation file.

The notification should include the following information:

- That an internal investigation has identified possible misconduct by the subject
- The general nature of the allegations
- That the allegations may constitute violations of UNRWA staff rules, regulations or administrative issuances (the specific provisions of the regulatory framework should be identified to the person)
- That the interview is part of the ongoing investigation and no findings have yet been made about the culpability of the subject employee.
- That should the allegations be substantiated the Agency may initiate appropriate administrative or disciplinary action

Providing this information in the manner described gives the subject an opportunity to prepare for the interview and respond to the allegations.³³

Interview planning

Make sure you set objectives for the interview.

Careful preparation is an essential element of a good interview. You need to have a clear understanding of what information you are trying to obtain from the interviewee. Besides having a thorough knowledge of relevant Agency policies you also need to have some indication of what information the witness is likely to have and whether the person is likely to be hostile or resistant to questioning. You need to anticipate how best to deal with these difficulties as well as strategies for

³³ United Nations Administrative Tribunal (30 September 2005) Judgement No. 1242, Reference AT/DEC/1242.

keeping the interview on track and relevant to the subject matter.

Developing the questions

Different people will respond in different ways to particular forms and styles of questioning. Some witnesses may be quite confident and provide information willingly whilst others may feel overwhelmed by the process and need support.

Interviews should be conducted in a friendly, professional and supportive manner. It is important to develop a good rapport with the interviewee so they are more at ease during the interview process. A comfortable interviewee will provide more information. During the process of developing rapport an investigator can often learn about the interviewee's communication style and tailor the questioning accordingly.

The degree of cooperation will vary from person to person. Some will be quite honest whilst others will be reluctant to get involved and some will deliberately withhold information or seek to misdirect the inquiry. You need to be aware of these dynamics and adjust your questioning style accordingly. Properly managed, a reluctant or untruthful interviewee can be encouraged to cooperate and produce a greater amount of accurate and useful information.

Avoid making assumptions - ask further questions to clarify the issue.

Prepare a list of essential issues to be covered.

After you have reviewed the case material you should formulate a list of questions to ask the interviewee. The list of questions is only a guide and the interview should be allowed to flow naturally. You should not limit the interview to the prepared questions - rather you should pursue peripheral issues raised by the person to explore whether they are relevant to the matters under investigation. In these

circumstances the prepared questions can be a useful tool for ensuring that the interview is brought back on track and that all the relevant issues have been covered.

Style of questions

When developing the questions, remember that the object is to gather information that will prove or disprove the facts at issue. Where possible use questions that begin with 'Who?', 'What?', 'When?', 'Where?', 'How?', and 'Why?' These open-ended questions do not lead the interviewee in any particular direction and provide them with the opportunity to answer in a narrative form.

Closed questions are those which encourage a 'yes' or 'no' response and the continued and persistent use of such a technique is discouraged. Closed questions should only be used to confirm answers that have been provided by the interviewee in response to an open-ended question, or if you are having difficulty obtaining a clear answer from a person who prevaricates or is providing an ambiguous response.

You should also avoid asking multiple questions as a single question, for example – *'Have you worked for UNRWA at the P3 level since October 2004 as an education specialist based in Gaza and were you then transferred to Amman in November 2006 where you took up a position with the Human Resources Department?'*. These types of questions confuse the interviewee and cloud the response. A more effective interviewer would ask questions that seek to clarify point one point at a time:

- When did you first start work at UNRWA?
- What was your grade when you were recruited to UNRWA?
- Which department did you for when you were first recruited to UNRWA?
- Where was the position based?
- When did you leave that position?
- Where did you transfer to?
- Why did you transfer?

Arranging the interview

Your primary consideration in arranging the interview is the privacy of the witness or subject. Generally, you should contact the person by email unless you have reason to believe that the person's email account is viewed by others such as administrative support personnel. Where possible, you should avoid leaving telephone messages or attending unannounced at their place of work. You should also consider any cultural, gender or special issues which may affect your ability to obtain their cooperation. For example, if you wanted to interview a child witness you should contact the parents or guardian rather than contacting the child direct.

Subject and witness interviews should be conducted face-to-face. Face to face interviews allow you to make an assessment of a person's demeanour through their body language and physical response to certain questions. Nevertheless, from time to time circumstances may dictate that you conduct your interview by alternative means. Other options include telephone interviews, video conferencing and written requests for information.

Telephone interviews should only be conducted if you need the information urgently and the person is not located locally. A telephone interview may also be appropriate if you simply want to clarify some minor details arising from an earlier interview or if you need brief or more perfunctory information. In any event, if the interview is conducted in this manner the notes arising from the interview should be sent to the interviewee for signature.

Video conferencing is a better option than telephone interviews however the costs can be prohibitive. As with telephone interviews, the notes arising from the interview should be forwarded to the person for signature.

Written requests for information will sometimes be an appropriate method of

eliciting information, particularly if you are requesting information related to policies or procedures. There is however some drawbacks associated with this form of information-gathering. The process can be intimidating and time consuming for respondents and is clearly not suitable for people who have difficulty in communicating in writing. Requests for written responses may also offer the respondent the opportunity to carefully craft their answers. There is also a risk of loss of confidentiality and a heightened risk of collusion between witnesses.

Location of the interview

The interview location will vary according to the person being interviewed. Ideally, the location should be free of distractions and in a place that affords some degree of privacy.

Referring to documents

During some interviews it may be necessary to ask the interviewee to comment on a particular document. In these cases it is advisable to show the person a copy of the document and ask them to initial each page. The document should then be annexed to the statement provided by the witness or subject. The document should also be described on the record of interview in sufficient detail so that there is no dispute later about which document was discussed.

Difficult questions

As the principal objective of an investigator is to gather information that will prove or disprove the facts at issue, it will sometimes be necessary to ask difficult questions. This is particularly relevant to investigations of sexual misconduct. For example, it is not sufficient to have an alleged victim of sexual abuse state that a particular person had sex with her against her will. You should ask the victim to provide greater detail and explain whether the alleged offender had forcibly engaged

in penile / vaginal penetration. These are difficult questions to ask, but are necessary to establish the facts, and to provide enough detail to a subject to allow them to respond to the allegation.

Using interpreters

When a witness or subject does not have a good understanding of the language spoken by the investigators you should engage a suitably qualified interpreter to assist with the interview. The need for an interpreter should be identified during the planning phase and referenced in the Investigation Plan. It is important to use an interpreter so that an accurate account of the person's evidence can be obtained and to negate the possibility that they will recant their statement on the basis that they had not properly understood the questions.

It is preferable to use a trained and accredited interpreter however resource restrictions or practical considerations often make this impossible. Nevertheless, you should avoid using the family and friends of the interviewee because of the possibility that the interpreter will lose objectivity, prompt responses or inaccurately interpret the questions and answers.

Most of the interpreters you use will come from within UNRWA and it is important that you select a person who has no relationship with the interviewee. An interviewee may be less inclined to provide information in the presence of a colleague and there is a chance that any bias by the interpreter may taint the translation.

It is also important that you inform the interpreter that they should interpret exactly what is being said and that they are not to add interpretations or clarifications.

When using an interpreter make sure that you speak to the interviewee directly. Have the interpreter interpret the questions and answers. Resist directing the questions to the interpreter. Do not use language such

as 'Ask the person...' or 'Tell the person...'

The interpreter should be reminded of their obligation to keep the details of the interview confidential. Before their involvement in the interview they should be asked to sign a Declaration of Confidentiality. This is in addition to the interpreter's declaration at the end of the witness statement.

The Declaration of Confidentiality emphasises both the need for the interpreter to exercise discretion concerning their assistance and their duty to keep confidential all information known to them by virtue of their assistance. The declaration also includes an acknowledgement that divulging confidential information to unauthorised personnel may constitute misconduct. A copy of the signed declaration form should be kept with the investigation file.

[A Declaration of Confidentiality template can be found at appendix 7.](#)

Arabic and English translations

It may be necessary to provide material in English so that it can be reviewed by decision-makers and other stakeholders in the Agency. This does not preclude you from taking a statement or conducting an interview in Arabic, however in some cases you may be required to provide an English translation of the main points arising from the interview. DIOS recommends that you include this translation in a Note to File and attach it to the original Arabic language statement.

Interruptions

Ensure that during an interview, particularly lengthy interviews, interviewees are offered the opportunity for a break. You should be mindful that some people may suffer from a medical complaint that requires them to take frequent breaks. You should also be sensitive to religious obligations such as the call to prayer.

You should note the reason for the break and the time that the interview is suspended and resumed. It is generally prudent not to discuss the subject matter of the interview or the investigation with the person during the break. When the interview is recommenced you should ask the person to confirm anything that was discussed during the break that was relevant to the investigation.

Requests for a third party to be present

When a third party is present during an interview as support for the interviewee it is necessary that they understand that they are there as an observer and may not take part in the interview.

There are a number of situations where you will need to have a third party present at the interview. When a witness does not have a good understanding of the language spoken by the interviewers you will need to engage the services of an interpreter.

Interviews with a child, that is a person under the age of 18 years, will require the presence of a parent, guardian or independent third person. This is to provide support to the child and to negate any allegations that the child was inappropriately questioned or otherwise mistreated during the interview process.

Interviewees will occasionally ask if they can have another person present during the interview, such as a lawyer or union representative. The presence of a third person may make the interviewee feel more comfortable and therefore make the interview easier to conduct. Nevertheless, the request needs to be balanced against the need for confidentiality.

If you decide to allow a third party to be present during the interview you should ensure that that person is not otherwise involved in the inquiry either as a potential witness or subject. You need to be mindful of potential conflicts of interest and ensure

that the third party has not acted in a similar capacity for other persons involved in the investigation.

The third party should be told before the interview that their role is simply to observe and not to take part in the interview. They should be instructed that they are not to advocate on behalf of the interviewee and that they are not to discuss the subject of the interview with any other person. Staff members who act as third parties should be requested to sign a Declaration of Confidentiality.

Interviews of children

Interviewing child victims of sexual assault or corporal punishment is not an easy task and great care has to be taken to prevent further trauma and stigmatisation. Whilst many of the principles associated with adult interviews apply, such as the use of open-ended questions, there are some additional techniques that may help you to obtain reliable and complete information.

An effective child interview should be conducted in a non-leading and non-suggestive manner that allows the child to relate his or her own version of events. The interview should normally be conducted by an interviewer of the same sex and should take place in an informal, relaxed setting and in a location which affords a high degree of privacy. Ideally, the interview team should consist of not more than two persons. In some circumstances it may be necessary to use just one investigator, particularly if the victim is a female and you only have one female investigator available. The child should not be interviewed in the absence of the child's parent, guardian or an independent third person.

At the commencement of the interview, the investigator should:

- Explain the purpose of the interview
- Explain to the child that it is perfectly acceptable to tell the interviewer if

they don't know the answer to a question

- Explain that to the child that they should correct the interviewer if he or she is mistaken.

It is also important that the investigator use short questions and simple sentences and words consistent with the child's age and developmental abilities.

Adoption of the interview

The main objective of an interview is to obtain all the relevant information and to record it in a manner that minimises the possibility of the person recanting their statement.

The key requirement for the written statement is that the interviewee is invited to read the completed document and provide clarification or correction of any errors. The interviewee should then be invited to initial the bottom of each page and sign the statement and an accompanying declaration:

'I hereby acknowledge that this statement is true and correct and that it may be used in disciplinary proceedings.'

If a translator or independent third person is present for the interview then they should be invited to sign a declaration stating:

'I hereby undertake not to divulge any confidential information to which I have access in the exercise of my role as an independent witness/interpreter during this interview.'

The investigator conducting the interview should also sign the statement as witness to the other signatures.

Evaluating the statement

If the interviewee raises issues during the interview of which you were not

aware you must explore those issues before completing the investigation.

At the end of the interview you should evaluate what was said and decide whether you need to re-interview the person or interview other people.

During the interview you may have been told about documents or other potential witnesses of which you were not previously aware. As a rule, ask yourself at the end of each interview whether there are any new avenues of inquiry to pursue and whether they would aid your investigation.

Documenting witness interviews

The witness interview can be recorded in statement form or in an electronic format. Before making a decision on how to record the interview you need to consider the suitability and relative merit of each method.

Written statements

DIOS recommends that written statements be obtained from witnesses. The statement can take a number of forms.

Question and answer (Q&A)

Some investigators prefer to obtain the statement in a question and answer format. The investigator prepares the questions in advance and types in the witness's responses during the interview. Additional questions and answers are entered on the record as the interview progresses. The result should be an accurate but not verbatim written record of the interview conducted on that day.

Narrative

Other investigators prefer to prepare a narrative type statement. The witness is asked questions and the responses are woven into a narrative that reads like a story but which recounts the witness's

involvement in the matters under investigation.

Combination narrative and Q&A

A third method is to ask the witness what occurred and record their response as a narrative, in much the same way as described in the previous method. At the end of the narrative the witness is asked a series of questions to clarify or redirect the witness to the substantive issues. These questions and answers are then recorded on the statement in the Q&A format.

Audio recording

Some investigators prefer to tape or digitally record witness interviews. This method has the advantage of providing an accurate and generally indisputable record of the conversation that took place on that day. The recording can be reviewed to settle any confusion or dispute about the questions and answers and, unlike a written statement, negates the possibility that the witness will debate the accuracy of the recorded answers.

Recording the interview electronically allows the interviewer to concentrate on the questions and answers rather than being distracted by the process of writing or typing the responses. The result is a free flowing interview that usually covers more ground than a written statement. The disadvantage is that some witnesses are reluctant to have conversations recorded electronically and the interviews themselves can lose focus and be prohibitively long.

There also needs to be some care in handling audio recordings. The rule of thumb is that the audio tape or a digital file needs to be handled as you would any other evidence (see chapter 4 on Gathering Evidence). A chain of custody needs to be established to avoid allegations of tampering or other misconduct. Digital files should be downloaded and saved to a write-protected compact disc. The process you use to download the file and save to compact disc needs to be recorded on a

Note to File. The information to be included in the Note to File includes:

- The date and time the digital file was downloaded
- The details of the recording device including the brand, model and serial number
- The file name
- The details of the computer used to download the digital file including the brand, model and serial number
- The date and time the digital file was copied to a write-protected compact disc
- The fact that no person changed altered or deleted any part of the digital recording during the download and copying process

The digital file should form part of the electronic investigation file (see chapter 7 on File Management) and the compact disc or audio tape should then be secured as you would any other evidence.

At the conclusion of the interview, the investigator must prepare a comprehensive summary of the interview for inclusion in the investigation file. In some cases, disputes over the content of the interview or a need to review the interview, may mean that you will be requested to prepare a full transcript of the interview. Do not underestimate how long this process can take. It can often take days to prepare an accurate transcript of an interview lasting only a couple of hours.

In all cases, the investigator responsible for arranging the transcript should check it against the recording, initial each page and sign an acknowledgement on the final page of the document stating:

'I hereby certify that this transcript is a true and accurate record of the interview that took place on [insert date].'

Interview structure

Although there are no hard and fast rules for structuring the interview, it will flow

better if it follows a logical path. One commonly used format is to separate the interview into four parts – the introduction; the open-ended questions; closed questions and the conclusion.

Introduction

The introduction should follow the following structure:

- The time, date and place of the interview
- The names of everyone present at the interview
- The name, position, workplace location, phone number and email address of the witness
- The purpose of the interview
- How the information provided will be used
- A short explanation of how the interview will proceed
- The witness should be asked whether he or she has any questions. Those questions and responses should be recorded as part of the witness's statement

Questions

This segment of the interview should consist of questions that engender a narrative response from the witness. Questions that allow the witness to describe what happened in their own words. Closed questions should only be used to confirm answers that have been provided by the witness or if the witness is prevaricating or providing an ambiguous response.

Conclusion

At the end of the interview you should ask the witness whether they have any further information that they wish to add and whether they have any objections to the manner in which the interview was conducted.

You should also inform the witness that the information they provided will be assessed and it may be necessary to conduct a second interview should clarification be required or if new facts become known. You should also invite the witness to contact you if they think of anything else that might be relevant and provide them with your contact details for this purpose.

[A Witness Statement template can be found at appendix 2.](#)

What do I do if the witness admits to misconduct?

During an investigation, you may obtain information which suggests that the person being interviewed has committed misconduct, related or unrelated to the allegations you are investigating. Once you are in possession of a material fact that indicates the person may have committed misconduct you should conclude or suspend the interview and seek advice from your manager or DIOS.

A material fact is information which without further investigation tends to indicate that the person has violated Agency rules, regulations or administrative issuances. It may be communicated to you in a witness statement, found in a document or be the result of your analysis of the evidence. A material fact is not rumour, innuendo or speculation.

What if a witness asks me for a copy of their statement?

At the conclusion of the interview some witnesses may ask for a copy of their statement. These requests should be granted unless doing so could undermine the confidentiality or integrity of the investigation. This is an issue that must be considered carefully.

The intentional or unintentional circulation of the statement will identify the person as a witness in the inquiry and could lead to collusion between witnesses, the

destruction of evidence or the intimidation of other witnesses. In these circumstances it may be prudent to retain the statement until the conclusion of the inquiry. Most witnesses will approve this course of action if they are made aware of the possible ramifications arising from circulation of the statement.

Documenting subject interviews

Interview structure

The structure of the subject interview should generally follow the format recommended for the interview of witnesses. The interview should follow a logical path and for convenience, can be divided into four parts; the introduction; open-ended questions; closed questions; and the conclusion.

Introduction and preamble

The introductory statements should include:

- The time, date and place of the interview
- The names of everyone present at the interview

After these introductions a preamble should be read to the subject employee informing him or her of the reason for the interview and their rights and obligations.

A suggested preamble is provided below:

'You are to be interviewed in relation to an allegation that:

[Provide a brief of summary of the allegations]

This conduct may constitute a violation of the following UNRWA regulations, rules or administrative issuances:

[Provide the specific references of the relevant provisions of the regulatory framework]

This interview is part of an ongoing investigation to establish the facts. The results of this investigation may either be a Closure Report, if the matters are not proven, or a Report of Investigation on the facts established.

If a report of investigation is prepared it will be forwarded to the relevant manager who may take further action.

After the interview has been concluded you will be given the opportunity to review the written record of questions and answers and invited to adopt the document by signature.

Please note that this written record is not a verbatim transcript of the interview.

Do you have any questions about the process which I have just explained to you?

[Record the person's response]

The subject should then be asked to identify themselves by name and employee number. He or she should also be asked to describe their current role, responsibilities and duties with UNRWA.

Conclusion and closing questions

At the end of the questioning there are a number of matters which should be raised with the subject before finalising the interview.

A suggested format is provided below:

'Is there anything else that we have not discussed that you think is relevant to this matter?

[Record response]

Do you have any documents which you would like us to review?

[Record response]

Is there any person that you believe we should interview to assist in this investigation?

[Record response]

Do you have any further information which you believe may be of assistance?

[Record response]

Do you have any objections as to how this interview was conducted?

[Record response]

Before I conclude this interview I would like to remind you of the provisions of General Staff Circular No. 5/2007 regarding protection against retaliation for staff members cooperating with investigations. You should be aware that any harassment of complainants or others involved in the investigation will be viewed as misconduct and may lead to disciplinary action.'

Content of the interview

Remember, procedural fairness requires that the subject be given the opportunity to respond to the allegations. Whilst they are required to cooperate with duly authorised investigations they may choose not to participate in the interview process. If this occurs, advise them of their obligation to cooperate and if they decline to be interviewed record their

decision in a Note to File and include it in the Report of Investigation.

The general advice that you should refrain from unnecessarily imparting confidential information during an interview does not apply to subject interviews. You are obliged to allow the subject to respond to every matter that has adverse implications for them. The subject must be made aware of the allegations and be provided with enough detail to be able to respond.³⁴ This would include the names of witnesses, except in circumstances where the witness or witnesses may be physically endangered by such a disclosure. Any nondisclosure on these grounds must be reasonable in the circumstances and must not deny the subject procedural fairness.³⁵

As with witness interviews, what often works best is the use of open-ended questions that encourage a narrative response followed by closed questions designed to clarify ambiguities or to deal with any facts at issue not previously covered by the subject.

A Record of Interview with Subject template can be found at appendix 8.

Committing the subject to a version of events

An interview is a two-way conversation that involves an exchange of information. If not planned and executed correctly this exchange can prejudice the outcome of the interview. This happens when the interviewer prematurely alerts the subject to issues that may allow them to construct a version of events that reduces their culpability for the misconduct under investigation.

For example, if you were investigating the forwarding of a sexually suggestive email by a staff member to another staff member, then you should first seek to establish

³⁴ United Nations Administrative Tribunal (30 January 2004) Judgement No. 1154, Reference AT/DEC/1154.

³⁵ United Nations Administrative Tribunal (21 November 2000) Judgement No. 983, Reference AT/DEC/983

whether the subject's computer was password protected and whether the password was known to any other persons. You should then ask whether the subject had ever forwarded sexually explicit emails to any staff members using the Agency computer system and whether he or she was aware of the Agency's directives concerning sexual harassment.

By raising these issues early in the interview, and committing the subject to a version of events, you may preclude the subject from constructing an account based largely on the information that the interviewer will inevitably provide over the course of the interview. A premature exchange may allow the subject to claim that the email was forwarded by others who were aware of his password or that the email was accidentally forwarded to the complainant.

Subjects setting conditions for cooperation

In some cases, the subject of an investigation may attempt to set conditions for their cooperation or participation in an interview. This may include demands for the interview questions to be provided in advance; that a third party is present for the interview; or that he or she is permitted to record the interview.

A subject has an obligation to cooperate with a duly authorised investigation. He or she has no right to insist that he or she be accompanied by another person, that they be given the questions in advance or that he or she be allowed to record the interview.³⁶

Nevertheless, the presence of a third person may make the subject feel more comfortable and therefore make the interview easier to conduct. The request however, needs to be balanced against the need for confidentiality.

If you decide to allow a third party to be present during the interview you should ensure that that person is not otherwise involved in the inquiry either as a potential witness or subject. You need to be mindful of potential conflicts of interest and ensure that the third party has not acted in a similar capacity for other persons involved in the investigation.

The third party should be told before the interview that their role is simply to observe and not to take part in the interview. They should be instructed that they are not to advocate on behalf of the witness and that they are not to discuss the subject of the interview with any other person. Staff members who act as third parties should be requested to sign a Declaration of Confidentiality that is similar to the declaration signed by interpreters (appendix 7).

Should I give the subject a copy of their statement?

You should always provide a copy of the statement or recording of the interview to the subject employee at the end of the interview or soon thereafter.

The only exception would be where the interview was conducted early in the investigation and to provide the statement or recording would undermine the confidentiality or integrity of the inquiry. In these circumstances, you should provide the copy as soon as the risk to the investigation has been mitigated.

Suspension during investigation

In some circumstances it may be appropriate to request that the subject be suspended whilst the investigation is underway. This may be necessary where there is an unreasonable risk that the subject employee will interfere with witnesses or destroy, conceal or otherwise tamper with evidence; or where the

³⁶ Director, General Legal Division Office of Legal Affairs (18 February 2005), Memorandum titled OIOS Inquiry.

continued presence of the subject employee at the UNRWA facility poses a danger to other staff members.

The Agency's staff rules allow for suspension pending investigation in certain circumstances:

Area Staff Rule 110.2 outlines the three basic matters to be considered before an area staff member is suspended with or without pay pending investigation:

- Where there is a charge of serious misconduct;
- Where the charge is prima facie well founded; and
- Whether the staff member's continuance in the office pending an investigation would prejudice the interests of the Agency.

Similarly, Rule 110.4 of the International Staff Rules provides that if a charge of misconduct is made against a staff member and the Commissioner-General so decided, the staff member may be suspended from duty pending investigation.

The decision to request suspension of a staff member should not be taken lightly. Whilst suspension with pay is not considered a disciplinary measure, it may have a detrimental affect on the person's career and will increase the pressure on investigators to complete the inquiry quickly.

The need to suspend a staff member is something that should be considered in the investigation planning stages and monitored over the course of the inquiry.

If you believe the suspension of a staff member is necessary you should first raise the matter with the person who commissioned the investigation and set the terms of reference for the inquiry.

When things go wrong

If during the course of a subject interview, you fail to raise a matter that has adverse implications for the staff member then you simply need to conduct an additional interview. In some very limited circumstances it may be possible to raise minor oversights with the subject employee by way of correspondence such as emails or memos.

6

Reporting on investigations

This chapter provides guidance on how to assess evidence and report findings and recommendations. It provides a suggested structure for reporting on cases and advice to managers on assessing whether the investigation is complete and conducted according to United Nations standards.

Overview

After you have completed the preliminary assessment or the investigation you will be required to prepare and submit a document summarising the investigation and making recommendations based on verifiable facts. The report must be factually correct, impartial and objective, concise, complete and logically organised.

DIOS has provided three reporting templates – Preliminary Assessment Report, Report of Investigation and a Closure Report.

A Preliminary Assessment Report should be used by investigators tasked to undertake an assessment of the allegation. The purpose of the preliminary assessment is threefold. First, to obtain all the relevant information from the complainant; second to identify the rule, regulation or administrative issuance that has potentially been breached; and third, to analyse the available information and make recommendations on whether further investigation is necessary.

A Report of Investigation should be used when the investigator makes adverse findings against the subject.

Closure reports are used to outline facts that are established during the investigation which support a conclusion that the allegations could not be substantiated or that an investigation of the allegations is no longer possible.

Evidence assessment

In drafting your report you will often be faced with evidence that is conflicting or ambiguous. In drawing conclusions or making findings you will need to carefully weigh the evidence and explain why one piece of evidence was given greater weight than another.

In making this determination you need to discuss the evidence in light of one or more of the following factors:

Corroboration

The importance of corroboration cannot be overstated and all attempts should be made to confirm or support (through additional evidence) the accounts provided by witnesses and the subject. Whilst corroboration might come from a variety of sources such as other witnesses, any objective evidence is particularly valuable. Depending on the circumstances of the matter being investigated independent corroboration may be found in email records, attendance records, personnel files or financial records.

Credibility

You need to explain the quality that makes a witness or a particular piece of evidence worthy of belief.

In determining the credibility of a witness, you should consider anything that has a tendency and reason to prove or disprove the truthfulness of the account provided by them. This may include the extent, opportunity or the ability of the witness to see or hear or otherwise become aware of matters constituting the facts at issue; the ability of the witness to remember and communicate their account; and the existence or non-existence of potential bias that may have tainted the witness's account or motivated them to lie.

In assessing credibility you may also wish to consider whether the statement made by the witness is consistent or inconsistent with any previous statements. In making this assessment it should be remembered that a failed recollection is not uncommon and should not necessarily result in the witness being discredited. Two persons witnessing an incident or transaction will often perceive it differently. Whether a discrepancy pertains to a fact of importance, or only to a trivial detail,

should be considered in weighing its significance.

Believability and plausibility

Linked to credibility is believability and plausibility. You may need to explain why a witness or particular piece of evidence should be believed especially within the range of possibility or probability.

False Denials

In some cases you may seek to rely on lies told by the subject to infer consciousness of guilt. In seeking to rely on this evidence you should be satisfied that the subject has told a deliberate lie and is lying because he or she is aware the truth could implicate them in misconduct. There may be reasons for the lie apart from a consciousness of guilt and people sometimes have an innocent explanation for lying. These issues should be explored before relying on this type of evidence to make investigative findings.

It should also be remembered that there is a difference between the mere rejection of a person's account and a determination that someone has told a deliberate untruth. Moreover, where there has been a departure from the truth, it may not be possible to say that a deliberate lie has been told. It may be the result of confusion - or when interpreters are being used - mistranslation. The lie must also relate to some circumstance or event connected with the misconduct. In summary, false denials should only be relied upon if you are satisfied that with respect to all the circumstances it reveals knowledge of the misconduct.

Preliminary assessment reports

An effective Preliminary Assessment Report will normally include a summary of the allegation, a brief description of the applicable provisions of the regulatory framework and the main actors involved in

the allegation, such as the complainant, the subject and key witnesses.

Although a preliminary assessment would not involve any action that would negatively affect the work place, investigators can often fill gaps by including material found on the internet or the UNRWA intranet. For example, the organisational structure of the work unit might identify the subject employee's reporting lines. This can be useful in identifying potential witnesses. In procurement cases, a wealth of information concerning vendors can usually be found on the internet. This type of information can significantly add to the investigators' knowledge of the circumstances surrounding the complaint.

Depending on the nature of the allegation you may also wish to include the following elements:

Working environment

It may be important to consider the working environment. In some cases it may be possible to ascertain whether there is a history of complaints against the subject employee or a history of animosity between the complainant and the subject. These factors should be included in the Preliminary Assessment Report.

Cultural issues

Cultural issues may also need to be considered particularly when investigating misconduct of a sexual nature. In these types of cases consideration should be given as to how investigators could conduct interviews in a manner that would not unnecessarily offend cultural or religious sensitivities.

Logistical issues and security

Identify the physical location of the complainant, the subject and any potential witnesses. Consider whether there is anything about the location of the parties that could have an impact on the

investigation. Are there areas where the safety of investigators conducting inquiries could be at risk?

Technical issues

Are there any technical issues that require the use of experts? For example, is the investigation likely to require a computer forensic expert or document examination?

Analyse the material

In some cases what appears to be improbable can ultimately prove to be true.

Remember, a preliminary assessment is simply a means to establish whether there is a basis to the allegation and to make recommendations on whether further investigation is warranted. You are not required to make investigative findings and disciplinary action should never be taken against employee on the basis of a preliminary assessment.

Make recommendations

The recommendations you make should be consistent with your analysis of the material.

This is also your opportunity to describe any systemic issues or deficiencies that you have identified during the preliminary assessment and make recommendations for systems improvement and misconduct prevention. This is particularly relevant when the preliminary assessment identifies issues which, if left unchecked, represent an ongoing financial risk to the organisation.

[A Preliminary Assessment Report template is annexed to these guidelines at appendix 1.](#)

Report of investigation

Ensure that the investigation is complete and that all available witnesses have been interviewed and all documentary evidence has been gathered.

The Report of Investigation should be structured in such a way that links the reported misconduct with the applicable UNRWA regulations, rules and administrative issuances. It should explain the steps taken to gather the evidence provide an analysis of the issues and explain why one piece of evidence was given more weight than another. The analysis should be free of speculation and no theoretical, moralistic or psychological analysis should be included.

Investigative findings and recommendations must be rational and sustainable and can only be included in a report after the subject has been given the opportunity to respond to the allegations as part of the interview.

Once it is completed the Report of Investigation should be forwarded to the person who commissioned the investigation for further action.

[A Report of Investigation template is provided at appendix 9.](#)

Format of the Report of Investigation

Whilst there is no single format for a Report of Investigation, a good report will usually consist of the following elements:

Introduction

The introduction should provide a brief summary of the complaint as expressed by the complainant. It should specify and number each allegation and include the date, time and place the incident(s) occurred.

Regulatory framework

This section should reference the relevant provisions of the regulatory framework applicable to each allegation. The number should correspond with the numbering of the allegations in the introduction. The regulatory framework will reference UNRWA rules, regulations, administrative issuances, policy, procedure and the provisions of any relevant criminal law.

If the provisions are long or complex then provide the relevant extracts of each of the provisions and provide more detailed information in a document annexed to the report as *'attachment 1'*.

Authorization

Provide a brief statement describing the authority you received to conduct the investigation. This will normally be found in the document that establishes the investigation and sets the terms of reference.

This section of the report should include the details of the person authorising the investigation, the date the investigation was started and the names of the investigators assigned to the inquiry.

Terms of Reference

This section should include the terms of reference for the inquiry. This information can be found in the document that established the investigation.

Background

- Source

State how the complaint was received. If the complaint was in written form and there are no confidentiality issues then the document can be annexed to the report as *'attachment 2'*.

- Subject employee

State the name and position of the person about whom the complaint has been made. This section should include a summary of the subject's employment history with the Agency.

Investigative details

This section should include a brief summary of how the investigation was conducted, including the names of persons interviewed, the details of key documents obtained and a summary of any specialised investigative techniques that were utilised during the inquiry.

- Complainant's version

Provide a brief summary of the complaint as provided by the complainant.

- Other witnesses

Provide a brief summary of the versions given by each of the relevant witnesses. You should also indicate whether they corroborate or contradict the versions provided by the complainant or the subject.

- Documentary evidence

Provide a brief summary of the documentary evidence obtained and relied upon during the inquiry. You should also summarise the affect of the documentary evidence on the findings - particularly whether the documents tend to corroborate or contradict the versions provided by the complainant or the subject.

- Subject's version

This section should include the main points arising from the subject's interview, including the person's response to each of the allegations, referencing the numbers referred to in the introduction and regulatory framework sections.

Systemic issues

The investigator should describe any issues, system deficiencies or policy gaps

identified during course of the investigation.

Findings

This is arguably the most difficult section of the report to complete and is often the subject of debate. This section is basically an analysis of the evidence and an opinion by the investigator as to whether the evidence gathered is capable of substantiating the allegations.

If there is more than one allegation, then they should be addressed under subheadings and numbering that corresponds with the numbering in the sections titled; introduction, regulatory framework and subject's version. Findings should be reached for each allegation. It may be necessary to explain inconsistencies in the evidence and to give an assessment of the reliability of the people interviewed.

If there is the evidence is insufficient to establish the allegations, or the allegations are not capable of substantiation, the investigator's conclusions should state that there is insufficient evidence to support any administrative action.

Conclusions

The conclusions are simply a summary of the facts that have been established cross-referenced to the relevant provisions of the regulatory framework.

Ensure that your conclusions and findings are firmly supported by the evidence.

Recommendations

If the investigator considers the evidence is capable of substantiating the allegations, then a recommendation should be made to the decision-maker that '*consideration be given to appropriate action*' being taken against the subject.

It is important that the nature of the appropriate action be left for the decision-

maker. The investigator should never recommend specific actions to resolve or address the allegations.

If the investigation has revealed any issues, system deficiencies or policy gaps then this section should include recommendations for systems improvement, policy amendments and misconduct prevention.

Attachments

The investigator should ensure that copies of relevant documents are numbered and attached to the report.

The types of attachments you may want to consider annexing to the report would include but are not limited to:

- A copy of the complainant's statement
- A copy of the relevant provisions of the regulatory framework
- Key witness statements that are directly related to the facts at issue
- Key documents that are directly related to the facts at issue
- A copy of the subject's interview

[A Report of Investigation template can be found at appendix 9.](#)

Closure reports

Closure reports do not normally exceed three pages and address allegations of misconduct involving UNRWA personnel. These reports contain descriptions of the reported misconduct, the steps taken to investigate the allegations and the reasons for the case being closed.

Closure reports are prepared to ensure accountability of the process underpinning the decision to close an investigation.

[A Closure Report template is provided at appendix 10.](#)

Disclosure of reports

All investigation related material contains confidential and sensitive information concerning individuals or the Agency's operations and activities. No Preliminary Assessment Report, Report of Investigation or Closure Report should be disclosed to unauthorised personnel inside or outside the Agency.

What if there is more than one subject?

Reports of investigations can address multiple violations of the regulatory framework, even if those matters arise out of separate sets of circumstances. If more than one staff member is implicated in the misconduct then it may be more appropriate to issue a separate report for each subject employee.

What do I tell the complainant?

It is generally not appropriate for the investigator to advise the complainant of the outcome of the inquiry. You can tell the complainant about the status of their complaint - that the matter is being assessed, under investigation or that investigation file has been referred to the decision-maker for review. There are however some exceptions, although for the most part the notifications associated with the following provisions fall upon the field director or the Director of Human Resources:

General Staff Circular No. 01/2009 'Prohibition of Discrimination, Harassment – including Sexual Harassment and Abuse of Power' provides:

'Actions that may be taken as a result of an investigation

31. *On the basis of the report, one of the following actions may be taken:*

- (a) *If the Field Director or [Director Human Resources], as applicable, consider that the allegations of prohibited conduct are unfounded, provided the complaint was made in good faith and was reasonably believed to be true, no action will be taken if the complaint turns out to be misguided or false. The case will be closed and the alleged offender and aggrieved individual provided with a summary of the investigation's findings and conclusions'*
- (b) *If the Field Director or [Director Human Resources], as applicable, consider there was a factual basis for the allegations that does not justify disciplinary proceedings but which warrants some other action [...]. The staff member and aggrieved individual shall be informed of the outcome of the investigation and the action being taken.'*

General Staff Circular No. 04/2008 'Sexual Exploitation and Abuse Complaints Procedures' provides:

- 8. *'On receipt of a complaint related to [sexual exploitation and abuse] [...] One or more of the following actions will be recommended:*
 - (a) *Preliminary investigation*
 - (b) *Further investigation of the complaint through such means as the establishment of a Board of Inquiry;*
 - (c) *Introduction of procedural or policy changes which would serve to reduce the incidents of SEA in the future;*
 - (d) *Any other action deemed appropriate.*

The Field Office Director or the [Director Human Resources], as applicable, shall seek the Commissioner General's approval on recommended courses of action, and shall convey the decision to the [focal point] for communication to the complainant.'

General Staff Circular No. 5/2007 'Allegations and complaints procedures and protection against retaliation for reporting misconduct and cooperating with audits or investigations' provides:

Handling reports of retaliation

32. *Once the Commissioner-General has decided on the course of action to be followed, the complainant shall be informed in writing.'*

And then?

The report and any attachments should be forwarded to the person who commissioned the investigation and established the terms of reference.

The conclusion of the investigation is not the final step. It is simply the point at which a decision is made that there is a factual basis on which to make recommendations about the possible misconduct or that the matter can no longer be pursued and should be closed.

Even after the investigation is closed, the investigator may be called upon to support post-investigation activities. This may include providing testimony before internal justice bodies and local courts should the matter result in criminal prosecution and subject to the advice of the Department of Legal Affairs and appropriate waivers of privileges and immunities.

Advice to managers

How should I assess the Report of Investigation?

When reviewing the Report of Investigation there are a number of issues that you need to consider:

Have the principles of procedural fairness been applied throughout the investigation?

You need to be satisfied that the subject employee has been given the opportunity to respond to any adverse findings. One option available to you is to forward a redacted copy of the findings and conclusions of the investigation to the subject employee and invite that person to review the investigation and provide a written response. This can be quite effective in ensuring that the subject employee's due process rights have not been breached.

Have all the available witnesses been interviewed and all documentary evidence obtained?

It is crucial that all available witnesses have been interviewed and all documentary evidence has been obtained. It is particularly important to ensure that any witnesses nominated by the subject have been interviewed and any relevant material has been obtained and assessed.

Are the investigative findings firmly supported by the evidence?

Has the Report of Investigation been completed in the recommended format and are all the key documents attached?

Have any systemic or procedural issues been addressed?

Any irregularities or shortcomings in the Report of Investigation should be brought to the attention of the investigator for clarification and further action if necessary.

7

File Management

The investigation file is the Agency's permanent record of the inquiry. It is important that the file be maintained in such a way as to facilitate review by peers, managers and decision-makers.

Overview

The purpose of an UNRWA investigation is to gather facts in order to determine whether wrongdoing occurred and if so, to identify the person or persons responsible. Over the course of the inquiry the investigator will gather or create many documents. Some of the documents collected will ultimately prove to be of limited value to the investigation however, they will still need to be managed and stored appropriately.

Proper management of the file is an important aspect of the investigation function. Effective file management and retention practices help organise and track the investigation and facilitates audit and review upon its completion.

The key to effective file management is to ensure that all the documents necessary to conduct and detail a complete and thorough investigation are maintained in such a manner as to be readily accessible at short notice.

Documents must be organised in such a way that investigators can quickly and easily locate key documents and to facilitate peer or supervisory review. Its organisation should also make it relatively easy for another investigator to review the file and quickly determine what investigative tasks have been completed and what still needs to be done to complete the inquiry.

Securing the file

At the first available opportunity you should copy any original documents including witness statements and secure the originals in a locked cabinet. Confidentiality requirements mean that strict security should surround the conduct of any investigation and it is critical that you prevent unauthorised access to original material.

Original documents should be stored in such a way that maintains their original

condition. Do not staple, fold or excessively handle or in any way mutilate these documents.

A working copy of the file can be maintained electronically or in hard copy form. A similar level of security should be applied to the working copy to prevent unauthorised access.

Hard copy of the file

Whilst no single method of organisation is best in all circumstances, it is usually advisable to organise similar material into logical groupings which are then properly indexed in a folder.

For example, the first tab would contain documents relating to the original complaint and the preliminary assessment report. The second tab would contain the complainant's statement. The third tab would contain the Investigation Plan, the fourth tab witness statements, and the fifth tab notes to file and so on.

This is usually the minimum requirement to facilitate peer or supervisory review.

Electronic copy of the file

Many investigators prefer to maintain an electronic copy of the investigation file. It is particularly useful if there are a large number of documents and access to the file is required away from your assigned duty station. Given the confidentiality requirements it may be appropriate to keep the electronic copy of the file on a USB drive or some other portable flash memory data storage device rather than on the shared drive of your work computer. Of course, you need to secure the portable drive as you would any hard copy of the file.

Electronic copies of the file are maintained in a different manner to hard copies. An electronic copy is usually maintained chronologically.

Here are some tips for maintaining an electronic copy of the file:

- Create and name a folder in which to store the file
- Save files in a numeric format, for example the first document may be the original complainant and should be saved as '*001 Original Complaint*'. The second document may be the Preliminary Assessment Report and should be saved as '*002 Preliminary Assessment Report*'.
- Original documents should be scanned and saved as a PDF. This is particularly important for any document that contains original signatures such as witness statements, notes to file and subject interviews. It reduces the risk of allegations that the document has been altered or amended from its original form.
- A Document Register should be created in order to identify the number of the document, the date the document was obtained, a description of the document and the author of the document. The Document Register should be saved as '*000 Document Register*'. The Document Register should always be the first document in the electronic folder.

[A Document Register template is provided at appendix 11.](#)

Draft documents

Draft documents should be retained and saved in the investigation file, particularly if you believe that it is necessary to demonstrate that a certain line of reasoning was considered and then rejected. Similarly, drafts of witness statements should be retained if the investigator believes that it is necessary to document the changes made to the statement by the witness.

Original notes

Whilst there is no requirement to place the investigator's original notes on the file – it is good practice to keep this material until final disposition of the case. Maintaining these notes may help you answer questions that arise during the adjudication process and which cannot be answered by reference to the case materials.

Note to file

It is essential that you make a note of all investigative activity that is not documented in a witness statement or subject interview. Notes to file provide a means for recording this information. The type of information that should be recorded includes but is not limited to:

- Case discussions with supervisors or other investigators
- Details of phone calls
- Attempts to interview witnesses
- Issues relating to the chain of custody

Notes to file can also be used to record the details of inquiries that relate to UNRWA systems or processes. For example, you may need a representative of the Information Systems Division to explain the network password policy. There would be no need to include this information in a witness statement. The outcome of that inquiry could simply be recorded in a Note to File.

[A Note to File template is provided at appendix 5.](#)

Running sheets

A useful practice for investigators is to maintain a Running Sheet for every investigation. A Running Sheet is a chronological record of events that have taken place during the inquiry. Running sheets provide a record of who did what and when. They are particularly useful when an investigation is complicated,

protracted, involves more than one investigator or there is likely to be a transition of staff over the course of the inquiry.

[A Running Sheet template is provided at appendix 12.](#)

And then?

DIOS recommends that each field and department director establish local procedures for centrally storing and securing material arising from completed investigations. Electronic versions of the investigation file must be uploaded to the centralised case management system.

At the conclusion of your investigation a draft final report will be forwarded through the reporting structure as outlined in the original terms of reference. The investigation file should be stored according to existing Agency instructions or at the direction of your manager.

You should remember that the file may be reviewed by supervisors, decision-makers or by those involved in any subsequent proceedings. It is important that you are satisfied that the investigation is complete and the file is presentable with the documents organised logically and in such a way that the file could withstand scrutiny.

Appendices

Editable copies of these templates are available on the DIOS intranet site

APPENDIX 1

Preliminary Assessment Report



United Nations Relief and Works Agency
for Palestine Refugees in the Near East

PRELIMINARY ASSESSMENT REPORT

Case Number:

Date Submitted:

Assigned Investigator:

Submitted by:

ALLEGATION:

[List allegations by number]

REGULATORY FRAMEWORK:

[List rules, regulations and administrative issuances applicable to the allegation(s)].

COMPLAINT:

[Provide a summary of the complaint. If possible obtain a witness statement from the complainant and submit with the PAR]

MAIN ACTORS IN THE CASE:

Complainant:

[Insert complainant's details]

Subject:

[Insert complainant's details]

Potential Witnesses:

[Insert the details of any potential witnesses]

RESEARCH UNDERTAKEN:

[Include any other relevant information such as previous incidents that may be linked to this complaint or the results of recent audits that may impact on this allegation]

CONTEXT OF THE ALLEGATION:

Working environment:

[Insert information relating to any work place factors that may have a bearing on this complaint. This would include information relating to any known history of animosity between the complainant and the subject of the allegation(s)].

Cultural issues:

[Insert information relating to any cultural issues that should be considered prior to commencing a formal investigation. This is particularly relevant to investigations concerning sexual misconduct]

Logistical issues and security:

[Identify the physical location of the complainant, the subject and any potential witnesses. Consider whether there is anything about the location of the parties that could impact on any formal investigation. Are there areas where the safety of investigators conducting inquiries could be at risk?]

Technical issues:

[Are there any technical issues in the case that require the use of experts? For example, is the formal investigation likely to require a computer forensic expert?]

ASSESSMENT OF CASE:

[Insert information relating to your assessment of the case including the credibility of the complainant. Also include your assessment of the impact of the allegation on the operation of the program / project / office].

RECOMMENDATIONS:

[Insert your recommendation concerning further action with respect to the complaint. This would include recommendations on conducting a formal investigation / closing the case with no further action / resolving the issue through management intervention / referring the matter to another department / taking some other action].

APPENDIX 2

Witness Statement



WITNESS STATEMENT

Case Number:

Date:

Time:

Witness Name:

Witness Business Address:

Witness Phone number:

Witness Email Address:

Person taking statement:

Other persons present (including interpreter):

[Statements from witness can be in the Q&A format or narrative. A combination of both is also acceptable. The key requirement is that the witness be invited to read the completed statement and provide clarification or correction of any errors. The witness should then be invited to sign the statement and accompanying declaration].

[Insert text]

[Closing questions]

Q Do you have any further information which you believe may be of assistance?

A

Q Do you have any objections as to how this interview was conducted?

A

[Obtain the interviewee's signature in accordance with the declarations below. If the witness does not sign the statement, please make a notation to that effect and record their reason(s) for not signing the document. The interviewee should also initial the bottom of each page of this statement]

I hereby acknowledge that this statement is true and correct and that it may be used in disciplinary proceedings.

Interviewee name (please print):

Signature:

Date:

I hereby undertake not to divulge any confidential information to which I have access in the exercise of my role as an independent witness/interpreter during this interview.

Independent Witness/Interpreter name (please print):

Signature:

Date:

Investigator name (please print):

Signature:

Date:

Investigator name (please print):

Signature:

Date:

APPENDIX 3

Investigation Plan

I N V E S T I G A T I O N P L A N

Case Number:

Date Submitted:

Assigned Investigator:

Investigation Plan Submitted by:

Background:

Outlining the background to the case and include a brief narrative of the complaint and the results of the preliminary investigation.

Terms of reference:

Include the terms of reference as provided in the documentation referring the matter to you for investigation.

Allegations:

Include a numbered list of the allegations. It is important to remember that a single complaint may contain a number of allegations. The Investigation Plan should include only those allegations that you are authorised to investigate as per the terms of reference.

Each allegation should be followed by a reference to the applicable that corresponds to the allegation; the facts at issue for that particular allegation and the relevant avenues of inquiry. Completing an evidence matrix is often a useful way for ensuring that your investigation stays focussed.

The facts at issue are those matters that need to be established to determine the veracity of the allegation. See the evidence matrix annexed to this template

Tasking list:

The interview plan should include a list of specific tasks to be completed over the course of the investigation. This list will be based on the avenues of inquiry and should be recorded in order of priority.

Other issues:

This section should include any issues that may affect the conduct of the investigation. The types of issues to consider include:

- Whether the complainant wishes to remain anonymous
- Whether there is a potential for destruction of evidence or interference with witnesses
- The potential for media attention
- Whether there are any political considerations that may impact on the investigation
- Whether there are cultural issues that may impact on the investigation. This is particularly relevant to matters involving the investigation of sexual misconduct
- Have any key witnesses left the agency or are will they be unavailable for a prolonged period

Resources:

Provide an assessment of the resources you will require to conduct a successful investigation. The types of issues to consider include:

- The need for specialist assistance such as forensic IT support. In cases involving allegations of sexual assault against children consider engaging the services of a suitably qualified forensic interviewer.
- Any logistical or security issues that are likely to impact on the investigation

APPENDIX 4
Medical Release Form



MEDICAL RELEASE FORM

I, _____, the undersigned, consent to the release of all medical records, documentation and statements by medical personnel pertaining to my treatment at _____ (facility name and address) on or about _____ (approximate date of treatment) to UNRWA.

This consent is provided on the basis that the information will only be utilised by investigators for administrative investigations undertaken by the United Nations.

Name: _____

Signature: _____

Date: _____

APPENDIX 5

Note to File



United Nations Relief and Works Agency
for Palestine Refugees in the Near East

NOTE TO FILE

Case Number:

Date:

Author:

Subject:

1.

Action to be taken:

(Include who will do it and estimated time frame)

APPENDIX 6

Receipt



unrwa
الأونروا

**United Nations Relief and Works Agency
for Palestine Refugees in the Near East**

CASE No.:	Name of staff member taking possession: _
DATE of RECEIPT:	
TIME:	TELEPHONE No:
LOCATION:	EMPLOYEE No.:
MATERIALS REMOVED FROM LOCATION:	
RECEIPT issued to:	RECEIPT issued by:
(Name, Title and Employee No. of person receiving the receipt)	(Signature of staff member issuing the receipt)

RETURNED BY:	ESTIMATED DATE OF RETURN:
(Name and Employee No.)	
(Signature)	
RETURNED TO:	ACTUAL DATE OF RETURN:
(Name, Employee No. and Location)	
(Signature)	

APPENDIX 7

Declaration of Confidentiality

Declaration of Confidentiality

I, the undersigned, shall exercise the utmost discretion with regard to my involvement in the work of (Insert Case Number). I shall keep confidential all information known to me by reason of my assistance in this investigation. I shall not use such information for private gain, or to favour or prejudice any third party.

I understand that this undertaking will remain in force after my involvement with Case No. _____ . I also understand that divulging confidential information to persons who are not authorised to receive it may amount to misconduct/breach of contract, and that the signed original of this declaration will be held in the relevant investigation file.

Name and Title

Signature:

Date and Place:

APPENDIX 8

Record of Interview with Subject



RECORD OF INTERVIEW WITH SUBJECT

Case Number:

Date:

Subject staff member's name:

Subject staff member's employee number:

Subject staff member's work location:

Subject staff member's phone number:

Subject staff member's email address:

Person(s) conducting interview:

Other persons present (including interpreter):

The interview commences at [insert local time]

My name is [insert text] and I will conduct this interview. Also present is [insert text]. S/he is here to assist with the interview.

You are to be interviewed in relation to an allegation that [insert text]

This conduct may constitute a violation of the following UNRWA rules, regulations or administrative issuances [insert text]

This interview is part of an ongoing investigation to establish the facts. The results of this investigation may either be a Closure report, if the matters are not proven, or a Report of Investigation on the facts established.

If a Report of Investigation is prepared it will be forwarded to the relevant manager who may take further action.

After the interview has been concluded you will be given the opportunity to review the written record of questions and answers and invited to adopt the document by signature.

Please note that this written record will not be a verbatim transcript of the interview.

Do you have any questions about the process which I have just explained to you?

After the interview has been concluded you will be given the opportunity to review the written record of questions and answers and invited to adopt the document by signature.

Please note that this written record is not a verbatim transcript of the interview.

Do you have any questions about the process which I have just explained to you?

[Detailed record of questions and asked and the interviewees responses]

Q Can you please tell me your name and employee number?

A

Q Can you please explain your current role, responsibilities and duties with UNRWA?

A

[Closing Questions]

Q Is there anything else that we have not discussed that you think is relevant to this matter?

A

Q Do you have any documents which you would like us to review?

A

Q Is there any person that you believe we should interview to assist in this fact finding exercise?

A

Q Do you have any further information which you believe may be of assistance?

A

Q Do you have any objections as to how this interview was conducted?

A

Q Before I conclude this interview I would like to remind you of the provisions of General Staff Circular No. 5/2007 with respect to protection against retaliation for staff members cooperating with investigations. You should be aware that any harassment of complainants or others involved in the investigation will be viewed as misconduct and may lead to disciplinary action.

A

The interview was concluded at [insert local time]

[Obtain the interviewee's signature in accordance with the declarations below. If the interviewee does not sign the record, please make a notation to that effect and record their reason(s) for not signing the document. The interviewee should also initial the bottom of each page of this record of interview]

I hereby acknowledge that this statement is true and correct and that it may be used in disciplinary proceedings.

Interviewee name (please print):

Signature:

Date:

I hereby undertake not to divulge any confidential information to which I have access in the exercise of my role as an independent witness/interpreter during this interview.

Independent Witness/Interpreter name (please print):

Signature:

Date:

Interviewer (please print):

Signature:

Date:

Interviewer (please print):

Signature:
Date:

APPENDIX 9

Report of Investigation

REPORT OF INVESTIGATION:

**ALLEGATION OF RETALIATION BY AN INTERNATIONAL
STAFF MEMBER AT THE [INSERT LOCATION]**

DRAFT

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I.INTRODUCTION

II.REGULATORY FRAMEWORK

III.AUTHORISATION

IV.TERMS OF REFERENCE

V.BACKGROUND

A.SOURCE

B.SUBJECT EMPLOYEE

VI.INVESTIGATIVE DETAILS

A.COMPLAINANT'S VERSION

B.OTHER WITNESSES

C.DOCUMENTARY EVIDENCE

D.SUBJECT'S VERSION

VII.SYSTEMIC ISSUES

VIII.FINDINGS

IX.CONCLUSION

X.RECOMMENDATIONS

1.Based on the foregoing, we recommend the following:

Recommendation 1: It is recommended that [insert recommendation]

Recommendation 2: It is recommended that [insert recommendation].

ATTACHMENT 1: [TITLE]

APPENDIX 10

Closure Report



Case Number:

Date:

To:

From:

Subject: Closure Report

On [dd Month yyyy], the (insert department name or identify field) received a report of possible misconduct implicating [insert full identification of the subject, including full name, title, office, department, etc.].

Specifically it was reported that [insert text].

The report was initially investigated by [insert text]

(insert field name or department) conducted an investigation into the reported misconduct, which included interviews with [number] witnesses and [insert subject's name]. We also collected and reviewed relevant documents, including [insert text].

The investigation is now complete. We found that:

[insert text]

[insert text]

We conclude that there is [no credible evidence/insufficient evidence] to substantiate the report of [misconduct/ SEA/conflict of interest/ waste of resources/ etc.] by [insert subject's name].

APPENDIX 11

Document Register

DOCUMENT REGISTER

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APPENDIX 12

Running Sheet

